UNIVERSITY OF MAINE
LIBRARY

Class no. 341
Book no. V45 v. 3
Accession no. 56,622

THE
CLASSICS OF INTERNATIONAL LAW

EDITED BY
JAMES BROWN SCOTT
Member of the Institute of International Law
President of the American Institute of International Law

Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la Conduite et aux Affaires des Nations et des Souverains

BY E. DE VATTEL

Volume I.—A Photographic Reproduction of Books I and II of the First Edition (1758), with an Introduction by Albert de Lapradelle.

II.—A Photographic Reproduction of Books III and IV of the First Edition (1758).

III.—Translation of the Edition of 1758 (by Charles G. Fenwick), with an Introduction by Albert de Lapradelle.

Press of Gibson Bros., Washington

THE LAW OF NATIONS
OR THE PRINCIPLES OF NATURAL LAW

Applied to the Conduct and to the Affairs of Nations and of Sovereigns

By E. de Vattel

> "For there is nothing on earth more acceptable to that Supreme Deity who rules over this whole world than the councils and assemblages of men bound together by law, which are called States."
>
> —Cicero, *Somnium Scipionis.*

VOLUME THREE

TRANSLATION OF THE EDITION OF 1758

By Charles G. Fenwick

WITH AN INTRODUCTION BY ALBERT DE LAPRADELLE

Published by the Carnegie Institution of Washington
WASHINGTON, 1916

TABLE OF CONTENTS.

Volume I.

PAGE
Portrait of Vattel . . . . Frontispiece
Preface by James Brown Scott 1a–3a
Introduction by Albert de Lapradelle . . . . i–lv
Bibliographie . . . . lvi–lix
Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la Conduite aux Affaires des Nations et des Souverains:
Photographic Reproduction of Books I and II of first edition (1758). 52+541

Volume II.

Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la Conduite aux Affaires des Nations et des Souverains:
Photographic Reproduction of Books III and IV of first edition (1758). 1–376

Volume III.

The Law of Nations, or the Principles of Natural Law, applied to the Conduct and to the Affairs of Nations and of Sovereigns:
Translation (by George D. Gregory) of the Introduction by Albert de Lapradelle . . . . i–lv
Bibliography . . . . lvi–lix
Translation of first edition (1758) by Charles G. Fenwick:
Preface 1a–28a
Books I, II, III, and IV 1–398

56,622

INTRODUCTION

By ALBERT de LAPRADELLE

Translated by George D. Gregory

EMER DE VATTEL.

I.

LIFE.

A portrait,[1] some letters,[2] the brief testimony of a few contemporaries, that is all those who wish to know the man as well as the author will find of Vattel, a writer who has been so discreet as to leave little, except his work, for history to seize upon.

Emer (or Emmerich) de Vattel was born at Couvet, in the principality of Neuchâtel, Switzerland, on April 25, 1714. His father, David de Vattel, was a clergyman of the Reformed Church. His mother, Marie de Montmollin, was the daughter of a councilor of state and treasurer general of His Majesty the King of Prussia in the principality of Neuchâtel. His uncle, Emer de Montmollin, had upheld the right of Frederick I of Prussia to succeed to this principality and had thereby won the title of Chancellor; he had also taken part in several important negotiations and had been in close touch with the scholars of Germany, of England, and of France.

From his father's side, Emer de Vattel had inherited a taste for philosophy, from his mother's side a taste for politics, and from both a fondness for literature. His two older brothers took up the profession of arms. Emer

---

[1] The only likeness we have of Vattel is a full-length statue, made in 1875, which stands at the south front of the Library of Neuchâtel. It represents Vattel in his robes, calm and meditative, with his *Law of Nations* in his hand. The Historical Museum of Neuchâtel possesses a very clear lithograph of Vattel. It is signed Donon, but there is nothing to indicate the portrait which it reproduces. In the Library of the city of Neuchâtel my good colleague, M. André Mercier, professor in the Law Faculty of Lausanne, whom friendship prompted to undertake, in the interest of the present publication, such iconographic researches as were necessary, was fortunate enough to discover the original of this lithograph hanging from a gallery, and the Director of the Library, M. Robert, has kindly authorized its photographic reproduction. The reproduction of the lithograph having given better results than that of the picture, it has been preferred for the frontispiece of the present work. According to Bachlin's *Iconographie Neuchâteloise*, there is no portrait of Vattel other than this picture and this lithograph.

[2] The letters to which we allude are, not merely the *Lettres intimes d'Emer de Vattel*, published by Virgile Rossel in the *Bibliothèque universelle et Revue suisse*, 1902, January–March, p. 36 *et seq.*, but also one to an unknown correspondent, dated May 26, 1757, which M. Robert, the very distinguished Director of the Library of Neuchâtel, to whom we are glad in this place to express our thanks, has been good enough to bring to our notice; and, furthermore, letters relating to Vattel which our personal researches have enabled us to discover, especially in the correspondence of Voltaire and others, which we shall quote later on. Perhaps it would not be inadvisable to give *in extenso* the text of Vattel's letter of May 26, 1757, which has never been published, but which deserves to be, because it refers specifically to his masterpiece, the *Law of Nations:*

"*Neuchatel, May 26, 1757.*

"M. Bertrand has sent me his reply to you, my dear friend, in order to make only one package. I am adding a word or two, although I have already answered your letter. But, as I wrote you at odd moments, the last note will reach you much more promptly than the first. I have sent M. Beguelin 30 copies of a prospectus which I have had printed, announcing the appearance of my *Law of Nations* and giving a description of it. Be good enough, my dear friend, to help circulate this prospectus and to insert it in your Journal. Send a copy of it to the editors of the Literary Gazette of Göttingen. When this prospectus has been circulated, you will be better able to judge how many copies of the *Law of Nations* should be sent to Berlin, and I beg you then to let me know your opinion on this point. The printing will be completed in the month of October. I wish it could be done more rapidly, who, even as a child, gave evidence of studious proclivities, first thought of devoting himself to theology. After the death of his father, in 1730, he brilliantly distinguished himself in the humanities at the University of Bâle. In 1733 he went to Geneva. But his tastes turned him rather to literature and philosophy. The reading of Leibnitz determined his vocation.

In 1741 he published a *Défense du système leibnitzien.* The politic dedication of this work to Frederick II discreetly solicited an office. In 1742, on the invitation of the Marquis of Valory, minister of France to Prussia, he went to Berlin, the residence of the prince whose subject he was, and whose father had in 1727 ennobled his own. His personal tastes, his previous studies, the memory of his maternal uncle and grandfather led him to ask for a diplomatic position.

The young writer counted also upon his *Défense du système leibnitzien* to further his desires. "My book," he writes, "has been fortunate enough to please, because it treats of a subject that is much in fashion here. It has made friends for me in advance." Messrs. Jordan and de Jarriges, even the Queen Mother, welcomed the young writer with a good will that was most encouraging. But, although the book, which, because of its "fashionable" subject had won favor, did bring the young author useful protectors, it did not immediately give him the position he sought. As his slender means did not admit of his waiting, he went in 1743 to Dresden, where he had been led to believe that he would be more successful. The welcome he received at the hands of Count von Brühl, premier of the Elector of Saxony, confirmed his hopes. Private affairs took him back to Neuchâtel for a short time, but he returned to Dresden in 1746. The Minister of Finance "advances him 100 crowns on account of his salary." How "is he to be employed" and "what is his destination to be"? This can not be decided until the Elector of Saxony and King of Poland, then at Warsaw, returns to Dresden. So Vattel

---

but that is impossible here. I am very impatient to know what you think of my work, and I hope that you will tell me very plainly like a true friend. I prefer to have my faults told me when I can correct them; perhaps my book will go through more than one edition. This hope is not so very presumptuous, since I am having only 1,200 copies printed.

"You must not expect me to speak of the war; it is too terrible for me. I believe that many people agree with me in wishing for peace. May God grant it! In a little while at least, I hope. War is waged to-day with so much effort that it can not last long. We shall see no more Thirty Years' Wars.

"Please give my regards to M. Beguelin, and tell him that I wrote him on the 19th, sending a package of prospectuses, which will be put on the mail coach at Frankfort. My respects to the ladies, to all our friends, and particularly to M. de Jarriges, whom I always remember with the greatest pleasure. I wish with all my heart that your whey-cure will bring you abundant health. Mine is very good, in spite of the precarious state of my affairs. Do I owe this blessing to my constitution or to my little store of philosophy? To both, I think, but more especially to the former. You know, however, that I am not lacking in feeling. You will find some in my heart, my dear friend. Good-bye, I embrace you tenderly.

"DE VATTEL."

To this letter we may add another, dated July 16, 1758, to a French statesman, sending him the *Law of Nations* with the following words: "I hope, sir, that you will find in this little work proof of my love of the good, and particularly of my deep affection for France." (*Lettres autographes composant la collection de M. Alfred Bovet, décrites par St. Charavay.* Paris, Librairie Charavay frères, 1885, Series VI. *Poètes et prosateurs*, Vol. II, p. 459.)

waits, and while he waits he reads and pays visits; he dreams of marriage to a young girl, whom he is destined not to wed, but of whom he has been thinking since 1742, Mademoiselle de Merveilleux; he peruses "with infinite profit" Cicero's works on morals, and, according to his letters, divides his time "between reminiscence and hope." In February 1747 he receives a pension of 100 golden louis a year. "This," the Minister tells him, "is only a beginning." The year 1749 finds him at Berne as minister of the Elector-King; but not being tied down to continuous residence, he spends a large portion of the year with his family in Neuchâtel, devoting to literature the leisure left him by his mission. Keen of intellect and fond of society, he spends many pleasant years in Switzerland; his professional duties being light, he devotes his time to study. A graceful writer, an agreeable talker, his only recreation is the drawing-room; witness the following fragment of a letter, dated 1758, from Mademoiselle Provost to her friend Belle de Zuylen: "M. de Vattel lives at Neuchâtel. He spends his time studying and calling on ladies. I see him now and then. He is very polite, and his conversation is interesting and agreeable."[1]

He publishes *Pièces diverses de morale et d'amusement*, Paris, 1746, and Dresden, 1747; and still later, *Mélanges de littérature et de poésie*, Paris, 1757. At the same time he is preparing a more extensive work.

On May 26, 1757, he writes to a friend:

> "I have sent Mr. Béguelin 30 copies of a prospectus which I have had printed, announcing the appearance of my *Law of Nations* and giving a description of it. Be good enough, my dear friend, to help circulate this prospectus and to insert it in your Journal. Send a copy of it to the editors of the Literary Gazette of Göttingen. When this prospectus has been circulated, you will be better able to judge how many copies of the *Law of Nations* should be sent to Berlin, and I beg you then to let me know your opinion on this point. The printing will be completed in the month of October. I wish it could be done more rapidly, but that is impossible here."[2]

When his *Law of Nations* appeared, Germany had for two years been the scene of the first battles of the Seven Years' War. The King of Saxony, Augustus III, who had formed an alliance with Maria Theresa against Frederick of Prussia, recalled Vattel and appointed him Privy Councilor of the Cabinet. Placed thus in a position to apply to the handling of public affairs the knowledge he had acquired by study, Vattel gave himself up entirely to these duties. In 1762 he was able to publish another little philosophical work, *Questions de droit naturel ou observations sur le traité de la nature par M. Wolff*. This was the last product of his pen. In 1763 he had the pleasure of writing to his family: "I have the satisfaction of seeing this whole court, the public at large, and foreign courts commend the confidence that our sovereigns have placed in me." Unfortunately the strenuousness of his new duties, the burden of his occupations and cares, rendered still more wearing by the political complications arising at the end of the war, gradually undermined his robust constitution. "My health is very good," he wrote, May 26, 1757. "Do I owe this blessing to my constitution or to my little store of philosophy? To both, I think; but more especially to the former." He still preserved all his "philosophy," but he no longer possessed his good "constitution" when, in 1766, he returned to his own country seeking to recover his lost health. The air of his native land seemed at first to restore it somewhat; but shortly after his return to Dresden in the autumn of 1766 a relapse compelled him to go back to Neuchâtel. He died there prematurely on December 28, 1767, of "dropsy of the chest."

---

[1] This letter is to be found in Philippe Godet's *Madame de la Charrière et ses amis*. [2] See letter quoted above.

He left a young widow, Marianne de Chesne, belonging to a noble French family living in Saxony, whom he had married in 1764, and one son, Adolphe Maurice Vattel (1765–1827), who was destined to dabble agreeably in literature.

The death of this useful diplomat and excellent writer was more deeply felt in the circle of his intimate friends than in the more extensive—for him too extensive—fields of politics and of letters; for, to quote the graceful language in which one of his friends, Hennin, introduced him to Voltaire eighteen months before his death, he was loved "for the candor of his heart and the tenderness of his spirit."[1]

A glance at his portrait in the Library of Neuchâtel, a line or two written by Mademoiselle Provost to the future Madame de la Charrière, above all this simple tribute of a friend—too little for intimate knowledge, enough perhaps for conjecture—and we may picture Vattel to our mind's eye: a man of keen and discriminating intellect, cheerful and tender, kind and generous of heart, who wisely lived a useful but all too short life amidst the pleasures of speculation and the friendly intercourse of his fellow men.

---

[1] *Correspondance de Voltaire*, 1766, of that date.

II.

WORK.

Such being his amiable nature, Vattel was not one of those whose strong personality constructs a system, out of whole cloth and with more energy than elegance, upon a massive framework. But he belonged to those whose clear, piercing intellect, after assimilating the most abstract, sometimes the most obscure, conceptions, states them in graceful form, the more finished because the author's hand has scarcely touched the substance.

Perhaps he would never have written on the Law of Nations if Christian Frederick von Wolff (1679–1754) had not preceded him. An original disciple of Leibnitz, a vigorous intellect, and an indefatigable worker, Wolff had in his *Jus naturæ methodo scientifica pertractatum* made an ingenious but excessive use of mathematical demonstration. His work, which teems with Leibnitzian optimism, shows that man should combine his powers with those of other men to promote the perfecting of all; next, that nations, like individuals, in order to reach the goal set for them by the Law of Nature, must unite and co-operate. Nations have duties toward themselves: self-preservation and self-development; but they owe one another the same prestations and the same services that each owes itself, provided that these prestations can be paid or these services rendered without prejudice to the duties which each is bound first of all to fulfill toward itself. Each Nation has merely an imperfect right to aid from others—the right to request it—but may acquire a perfect right to such aid by means of a treaty.

On this original foundation Wolff had, in the course of his *Jus naturæ methodo scientifica pertractatum* (Frankfort, 1740–48, 8 vols., 4to), set forth a general theory of the Law of Nations, broad and vigorous in character. Later, in 1749, he presented this theory in a separate volume entitled *Jus gentium methodo scientifica pertractatum*. But this work, written in Latin, found no readers other than the learned.

The young writer, who in 1741 had just published his *Défense du système leibnitzien*, and who, while waiting for a diplomatic position, spent his time reading Cicero, was so delighted with Wolff's work that he conceived the idea of translating and then of adapting the portion of it dealing with international relations. Perhaps this idea would not have occurred to him if Christian Frederick von Wolff had remained in the political disgrace into which he had fallen twenty years before. In 1721, Frederick William II, misinformed concerning Wolff's doctrines by a courtier incapable of understanding them, had dismissed Wolff from the University of Halle. But at the very time that young Vattel arrived in Berlin, after the accession of Frederick II, Wolff returned to Prussia, where his chair had just been restored to him. Thenceforth it was possible to praise him without compromising a diplomatic career. But even though the professor of Halle had himself been restored to favor, his work was, in political circles, still under a ban more fatal than any that could be imposed by princes: it was too deep in thought, and its language had long ceased to be a living tongue. The scholastic Latin of Wolff deprived the book of the very readers who would have derived the greatest profit from it. Struck by the lack of harmony that exists between politics and philosophy, Vattel undertook to show the "leaders of Nations," through the work of Wolff freed of its obscurities, "what the Law of Nature prescribes for Nations." "I am conscious," said the adapter with charming modesty, "of my deficiencies in both knowledge and ability." He does not pretend to give a new solution of the problem of the relations between States, but offers simply a popular version, clear, elegant, and, consequently, more accessible than the powerful, but somewhat stiff and pedantic, work of the German philosopher. Vattel, a man of the world, a cultivated intellect, an esteemed diplomat, acts as a graceful intermediary between the learning of Wolff and the diplomacy of the time. Thanks to him the ideas of Wolff, ingeniously presented, shake off their scholastic dust and make their way into courts, embassies, and the "polite world."

Generous of heart, he approaches the Law of Nations as a cultured diplomat who desires to instruct in the principles of the philosophy of his time those in charge of public affairs.

"I am not lacking in feeling," Vattel writes, under date of May 26, 1757, to an unknown correspondent. His entire adaptation of Wolff is only an illustration of this amiable trait. The theorists on the Law of Nature and of Nations—Grotius, Pufendorf, Wolff—hold that the golden age existed at the beginning of society and present it to Nations as the ideal to be attained at the end of their evolution. Following their example, Vattel endeavors to help mankind recover the happiness that it has lost. His philosophy is that of Wolff's master, Leibnitz—an optimistic philosophy which sets perfection, that is to say, self-development, before man as his object, and happiness as its result. But this generous soul who hopes that people will find in his work "proof of his love of the good," is at the same time a free-thinker, who has undergone the influence of the philosphy of his time, and who has read the physiocrats and the encyclopædists. He admires Voltaire, and has literary relations with La Chalotais.[1] Born at Neuchâtel, a subject of the

---

[1] Voltaire's correspondence proves this.

King of Prussia, and minister of the King of Saxony, he has indeed what a great American calls the "international mind," and in his preface he can truthfully say that, being Swiss, he brings into his work a real concern for liberty. Finally, he is one of those who always find war "too terrible" (letter of May 26, 1757). In his efforts to guide mankind toward happiness by laying down rules for Nations, what ideal does he point out to mankind? What duties does he set before the "leaders of Nations"?

Political liberty;
Mutual aid among Nations;
Diminution and mitigation of wars.

In addition, he seeks, not without encountering difficulties, a sanction for the Law of Nations.

1. Political Liberty.

The philosophy of Leibnitz led Vattel to a consideration of political liberty. "Nations or States are political bodies, societies of men who have united and combined their forces, in order to procure their mutual welfare and security." "The aim of the State," in Vattel's opinion, "is the happiness of the people, not the happiness of the prince." "A Nation is a being with certain essential attributes, with its own individual nature, in accordance with which it can regulate its actions." "A moral being can have obligations towards itself only in view of its perfection and its happiness. *To preserve and perfect one's existence* is the sum of all duties to self." "A Nation is perfected if it is made capable of obtaining the end of civil society." "The end or aim of civil society is to procure for its citizens the necessities, the comforts, and the pleasures of life, and, in general, their happiness." (Book I, §§ 13, 14, 15.)

In a voluminous dissertation, Grotius had argued against the view that sovereignty, always and without exception, belongs to the people. Just as an individual may give himself up to slavery, he had said, so may a people subject itself completely to one or more persons. In certain cases such submission will be advantageous. If it is objected that free men are not articles of commerce, Grotius replies that the liberty of an individual is one thing, and the liberty of the Nation of which he is a part another (§ 12). In support of his view, he gave examples taken from ancient history and cited, alongside of non-patrimonial kingdoms where regents are appointed by law, patrimonial kingdoms where they are chosen by the father of the sovereign who is not of age, or by his relations (§§ 14–15). Although Wolff, like

Grotius, had admitted the existence of patrimonial kingdoms, Vattel, who in his preface had called this matter to the attention of the reader, does not hesitate to argue against it. "It is absurd to think that a society of men could subject itself, except with a view to their safety and welfare. . . . This pretended right of ownership attributed to princes is a mere fancy, resulting from an abuse. . . . The State is not, and can not be, a patrimony, since a patrimony exists for the advantage of the possessor, whereas the prince is appointed only for the good of the State. . . . The authors we are opposing grant this right to a despotic prince. . . . In their eyes the kingdom is the inheritance of the prince, . . . a principle hurtful to humanity" (Book I, § 61). "A State can not be a patrimony" (§ 68). "Sovereignty is inalienable." "I know that several authors, Grotius among them, give us many instances of alienation of sovereignty. But the examples frequently prove only the abuse of power, and not the right" (§ 69).

For the first time the personality and the sovereignty of the State (§§ 3–4) are substituted for the personality and the sovereignty of the prince.

Mistress of her constitution, a Nation has the right to change it, and those who dissent are at liberty to leave the country. "They may leave a society which thus appears to be undergoing a process of dissolution and recreation; and they have the right to withdraw elsewhere—to sell their lands and to carry away all their goods" (§ 33). Founding the State upon a contract and uniting the happiness of man with that of the country, that is to say, of the "State of which he is a member" (§ 120), Vattel deduces in all their force the essential principles which determine the nationality of individuals. According to the feudal and despotic conception of the patrimonial State, birth in the country established allegiance. According to the doctrine of contract based upon men's happiness and their presumable sentiments, "natives are those who are born . . . of parents who are citizens. . . . The country of a father is therefore that of his children . . . by their mere tacit consent" (§ 212). According to the old feudal and despotic conception of the patrimonial State, allegiance was perpetual: once a citizen, always a citizen. Liberal and humane, Vattel, whose political philosophy is one of happiness, deduces from the social contract all the consequences that logic requires. "Every man has the right to leave his country and take up his abode elsewhere, when by so doing he does not endanger the welfare of his country." He adds, moreover, the wise caution never to do so except in case of necessity. "It is dishonorable to take advantage of one's liberty and abandon one's associates upon slight grounds, after having received considerable benefits from them" (§ 220). Vattel enumerates with great exactness the cases in which a citizen has a right to leave his country (§ 223).

Finally, from these same principles, he draws a more serious conclusion. After having deduced from the Nation's duty to preserve itself (§ 16) its duty to preserve its members, and from the non-patrimonial character of the State its inability to make a traffic of their liberty, but having likewise admitted that it may lawfully abandon its members, if the public safety requires it, Vattel asserts emphatically that "the province or town thus abandoned by and cut off from the State is not bound to accept the new master thus imposed upon it. Once separated from the society of which it was a member, it re-enters upon its original rights, and if it is strong enough to defend its liberty, it may lawfully resist the sovereign who claims authority over it" (§ 264). Collected from various observations, inspired by the spirit of the physiocrats and of the encyclopædists, these maxims, when brought together in the first book (which, following the fashion of the time, treats of the cultivation of the soil, the revision of constitutions, the organization of the judicial system (§ 162 *et seq.*), the army, piety, and religion), constitute a solid, human, and logical construction of the State, such as might have been expected, as a result of the doctrine of the social contract, from the fortunate encounter of the philosophy of happiness with the policy of liberty.

2. Mutual Aid.

But it is not sufficient to construct, or rather to "sketch" (I, § 11), a general theory of the State. Even if a quarter of the work were devoted to this theory, it could be only an introduction to the study of the Law of Nations.

To this study Vattel, the adapter of Wolff, brings an entirely new point of view. It is, on the one hand, a viewpoint of absolute independence. Just as men are equal, Nations are equal. In Vattel's opinion there are only sovereign States in the society of Nations. "Every Nation which governs itself, under whatever form, and which does not depend on any other Nation, is a *sovereign State*." The forms of the State are manifold: unequal alliance; protectorate; vassalage; federation; but none of them lacks sovereignty. Unless they possessed sovereignty Vattel would not consider these various kinds of States subject to the Law of Nations.

The State, which he considers a free and independent person, naturally has the same rights as man (I, § 4). From the equality of men Vattel deduces the equality of States (§ 36). Precedence, which depends, not on the form of the government, but on the power of the Nation, is a matter of politics, not of law (II, § 37). "Foreign Nations have no right to interfere in the government of an independent State" (II, § 57). On the foundation of the right of self-preservation Vattel constructs a Law of Nations the first principle of which is the mutual independence of sovereign States. Fearing the hegemony of a pope or of an emperor, he resolutely argues against even the idea, so dear to Wolff, of a *maxima civitas*, in which all the States would be subject to a single law, as if they had only one common superior. This is a pure fiction that Vattel rejects, apprehending that, if exploited by clever politicians, it might some day become a reality.

But while asserting the rights of Nations to self-preservation and independence, Vattel none the less recognizes that they have an international duty. "Since Nations are bound mutually to promote the society of the human race (Introduction, § 11), they owe one another all the duties which the safety and welfare of that society require" (II, § 1).

Offices of humanity are the acts of assistance and the duties which men, as men, are obliged to fulfill towards each other. But Nations being no less subject to the laws of nature than individuals (Intro., § 5), what one man owes to other men, one Nation, in its turn, owes to other Nations (Intro., § 10 *et seq.*).

> "The end of the natural society established among men in general is that they should mutually assist one another to advance their own perfection and that of their condition; and Nations, too, since they may be regarded as so many free persons living together in a state of nature, are bound mutually to advance this human society. Hence the end of the great society established by nature among all Nations is likewise that of mutual assistance in order to perfect themselves and their condition. The first general law, which is to be found in the very end of the society of Nations, is that each Nation should contribute as far as it can to the happiness and advancement of other Nations" (Intro., §§ 12–13). "Such is the foundation of those common duties, those offices of humanity, which Nations mutually owe one another." (Book II, § 2).

"In general, they consist in doing all in our power for the welfare and the happiness of others" (II, § 2). Thus the rights of the Nation to preserve itself and to guarantee itself against ruin, which Vattel had enumerated in the first book of his work, produce in the second the duty of other Nations toward it. They must assist it against a powerful enemy who threatens to oppress it (II, § 54), aid it when it is stricken with famine (II, § 5), impart their laws to it (II, § 6), not monopolize trade (II, § 35), nor take possession of vacant lands (II, § 98), carry on a mutual commerce with it (II, § 21), furthered by the institution of consuls (II, § 34), render justice irrespective of nationality (II, § 71), even aid it, when so requested by *letters rogatory* to carry out justice within their jurisdiction (II, § 76), open their gates to foreigners on condition only that they observe the laws of the country (II, § 101), not restrain them if they desire to leave (II, § 108), nor subject them to *droit d'aubaine* (II, § 112); finally, even in the event of civil war, they must aid that one of the two parties "which seems to have justice on its side" or protect an unfortunate people from an unjust tyrant (II, § 56).

But how can this reciprocal obligation be consistent with the independence and the liberty of States?

To solve the problem, Vattel first attempts to restrict it. After having said, "Each State owes to every other State all that it owes to itself" (II, § 3), he pauses, startled at his statement, but soon reassures himself with these two considerations:

> "(1) Sovereign States, or the political bodies of which society is composed, are much more self-sufficient than individual men, and mutual assistance is not so necessary among them nor its practice so frequent. Now, in all matters which a Nation can manage for itself, no help is due it from others.
>
> "(2) The duties of a Nation to itself, and especially the care of its own safety, call for much more circumspection and reserve than an individual need exercise."

Continually narrowing the scope and consequently the difficulties of the problems, Vattel, having more regard than Grotius for the independence and the liberty of Nations, declares that no State has the right to insure the improvement of another against its will. Savages may be confined within narrower boundaries (I, § 209), but they may not be civilized against their will:

> "Authority is needed if one is to constrain others to receive a benefit. . . . Those ambitious European States which attacked the American Nations and subjected them to their avaricious rule in order, as they said, to civilize them and have them instructed in the true religion—those usurpers, I say, justified themselves by a pretext equally unjust and ridiculous. It is surprising to hear the learned and judicious Grotius tell us that a sovereign can justly take up arms to punish Nations which are guilty of grievous crimes against the natural law, which treat their parents in an inhuman manner like the Sogdians." (II, § 7.)

A Nation, in order to have a right to the good offices of humanity, must request them: "It is for each to decide whether it is in a position to ask or to grant anything in that respect" (II, § 8).

But, having requested them, has it a right to obtain them regardless of the liberty of other Nations?

Embarrassing question!

To evade it, Vattel makes another effort. In his first book he had introduced renown as one of the possessions of the State: "The renown of a State . . . this noble possession which wins for it the esteem of other Nations and makes it respectable in the eyes of its neighbors" (I, § 186). By conscientiously fulfilling their duties Nations will acquire renown. "The duties of humanity go further than the mere granting to foreign Nations the innocent use which they can make of what belongs to us; it even requires us to make it easy for them to profit thereby. . . . Thus, it is the part of a well-regulated State to see that there are a sufficient number of inns where travelers may obtain food and lodging. . . . Honor is the certain reward of virtue" (II, § 139).

Valuable as this "noble possession" may be to Nations, it is nevertheless possible that, caring nothing for renown, they may shirk their duty of mutual aid and assert their independence. Such a stand would doubtless be lawful if the advancement of other Nations exposed a State to peril—if, in assisting a State to defend itself against a powerful enemy, it were necessary "to expose oneself to a great danger" (II, § 4). Circumstances may, however, be such that it is not the preservation of the State, but merely its interest or its caprice that leads it to use its right of independence as a pretext for failing in its duty of mutual aid.

Between independence and interdependence, between right and duty, the antagonism is stated in categorical and unanswerable terms.

The question can no longer be deferred; it must be answered.

Three conceptions help Vattel to do this: the *right of necessity; primitive community;* and *perfect rights* as opposed to *imperfect rights.*

Right of necessity.—Whenever it is a question of *necessity*, Vattel does not hesitate between independence and interdependence. "This is the right which mere necessity gives to certain acts, otherwise unlawful, when without the doing of those acts it is impossible to fulfill an indispensable obligation" (§ 119).

Necessity permits the taking of provisions by force (§ 120), the making use of vessels, wagons, horses, or even of the personal labor of foreigners (§ 121), the carrying off of women as the Sabines were carried off, but "no Nation was obliged to furnish the Amazons with men" (§ 122).

It gives also the right of passage:

> "If the owner of a tract of land should see fit to forbid you to enter upon it, you must have some reason, stronger than all his, to enter upon it in spite of him. Such would be the *right of necessity.* It permits an action which under other circumstances would be unlawful, namely, a violation of the rights of ownership. When you are compelled by actual necessity to enter upon the lands of another, for example, if you can not otherwise escape from imminent dangers, . . . you may force a right of way. But if the owner is compelled by an equal necessity to refuse you access, the refusal is just. . . . Thus a vessel, under stress of weather, has a right to enter a foreign port, and may even force an entrance; but if the vessel is carrying persons infected with the plague, the owner of the port may drive it off by firing upon it. . . ." (II, § 123.)

In the same way "if a people are driven from the lands which they inhabit" by some calamity, "they have the right to seek an abode elsewhere," but they may claim no more than "the right of dwelling in the country," and they must "submit to whatever tolerable conditions are imposed . . . by the lord of those lands" (II, § 125). Finally, although a neutral may refuse a right of way through his territory to an enemy army, the case is different "when an army sees itself exposed to destruction, or when it can not return to its own country" (III, § 122).

Primitive community of ownership.—If, on the other hand, fulfilment of the duty to give assistance causes no harm or inconvenience, for example, in the case of a purely passive obligation, like that of allowing the use of the coastal waters, rivers, or roads for commerce, it is not reasonable to require a Nation to sacrifice its right thereto because of the suspicious or capricious unreasonableness of a sovereignty that jealously guards its liberty. Indeed, in the beginning the earth was common to all men. "Destined by the Creator to be their common dwelling-place and source of subsistence, all men have a natural right to inhabit it" (I, § 203). The necessity of cultivating the land, in order to obtain its fruits, and of settling upon the soil people who were formerly nomads, has brought about the rights of ownership (*dominium*) and of sovereignty (*imperium*). But, being an exception to the primitive rule, these rights, created by necessity, have no other measure than necessity: "Private ownership can not have deprived Nations of the general right of passing to and fro about the earth, for purposes of mutual intercourse and commerce and for other good reasons. The owner of a country can only refuse a passage to others on those special occasions when it might be hurtful or dangerous to him. . . . If a State apprehends any danger from its grant of the right of passage it may require pledges from those who desire the right, and these pledges may not be refused. . . . In like manner passage should be granted for commercial purposes. If such passage causes any inconvenience, or any expenditure for the maintenance of highways and canals, compensation may be obtained by the imposition of tolls." (II, §§ 132, 133, 134, 135). *Cf.* I, § 103.

The same rule holds good with respect to the passage of people, as well as of merchandise, and to their residence in the country. In all these cases, of *innocent use* except for good and sufficient reasons, the ruler of the country can not escape from his duty; whence the necessity for the State's giving its reasons before refusing the right claimed. But, as the State can not object on the ground of the dangers of passage if we offer security, nor on the ground of the charges resulting therefrom if we submit to the tolls, the right of innocent use, theoretically inferior to the right of necessity, becomes practically equal to it. A Nation has not the right to force another to carry on trade with it (II, § 25), but it has the right to use the territory of that Nation to carry on commerce with a third (II, § 132).

Finally, "when by the laws or the custom of a State certain privileges are granted to foreigners in general, as, for example, the right of traveling freely in the country without express permission, of marrying there, of buying and selling certain goods, of hunting, fishing, etc., no one Nation may be excluded from the general permission without doing it an injury. . . . It is evident that we refer here to concessions of innocent use; and the very fact that the Nation grants such privileges to foreigners in general is sufficient proof that it considers the acts in question innocent as far as it is concerned, and is a declaration that foreigners have a right to them; hence, *as the use is conceded by the State to be innocent*, the refusal of it would constitute an injury" (II, § 137).

Perfect and imperfect rights.—On the other hand, if it is a question of a right that has no connection with primitive community, that is to say, with the use of the land, such as the obligation to carry on trade, to receive consuls, to assist other Nations in carrying out justice, to give them aid against an overpowering enemy, another distinction, unsuspected by Grotius and Pufendorf, enters in—that between perfect and imperfect rights.

Here the author of the *Défense du système leibnitzien*, a jurist and a philosopher, draws his inspiration, as did Wolff, from the theories of their common master.

To Leibnitz, it is man's duty to bring his free acts into harmony with the dictates of nature, to obey the natural impulse that urges every being toward self-preservation and self-development. Powerless to bring this about by himself, he must join forces with other men to aid in the improvement of all. Such is the foundation of the duties of mankind. These duties are only a consequence, an extension of those of the individual; they are the means to an end. Consequently, man should strive for the improvement of others only in so far as he can do so without injury to himself. In the hierarchy of duties, those towards oneself take precedence over those towards others. Egoism takes precedence over altruism. The duty of rendering assistance to others exists only in so far as it is compatible with the right and duty of self-preservation.

Both Wolff and Vattel work out the legal consequences of this philosophy. To their minds a contradiction exists between the right of self-preservation and the duty of aiding others. Self-preservation is the rule, rendering assistance to others the exception. When in doubt, self-preservation is to be preferred to the rendering of assistance; the duty of rendering assistance must not endanger the duty of self-preservation; the advancement of others can not be compared to our own safety. Whenever our safety is threatened, it is our right and our duty to refuse the assistance asked by another. But, when in doubt, who will be the judge? Since Nations are equal (Intro., § 18), when they disagree a solution of their differences is impossible. "Since these offices are only due in a case of need, and from a State which can render them without neglecting its duty to itself, it belongs, on the other hand, to the Nation of whom help is requested to decide whether the case really calls for it, and whether the Nation is in a position to grant it with due regard to its own safety and welfare" (II, § 9).

But a right, of which we are the sole judge, depends only upon us: it is a moral right, sanctioned by the feeling, more or less true and deep, that we have of our duty, a right that barely passes the bounds of conscience. It goes but a step beyond the threshold of our inner world into the outer world of social realities. It is an internal obligation because it "binds the conscience"; it is at the same time an external obligation because it "produces some right among men" (Intro., § 17); but this gives rise to an imperfect right, because it gives its beneficiary only the power to request something without adding the power to secure the thing requested—an imperfect, not a perfect right. "Perfect rights are those which carry with them the right of compelling the fulfilment of the corresponding obligations; imperfect rights can not so compel. Perfect obligations are those which give rise to the right of enforcing them; imperfect obligations give but the right to request" (Intro., § 17).

Thus is explained the fact that Nations have the duty of opening their doors to commerce, but, at the same time, the right of closing them against it; that they have the duty of receiving foreigners, but, at the same time, the right of expelling them; that they have the obligation of receiving consuls, but, at the same time, the power of refusing to receive them; the duty of executing letters rogatory, but, at the same time, the right of revoking them; the duty of giving aid to the oppressed, but, at the same time, the right of doing nothing for them. A reconciliation of these various contradictions is brought about. But the reconciliation is effected, not by an interpretation contrary to the will of the State of which a request is made, but by a wholly subjective and arbitrary interpretation of a rule, contrary to its will, by the State that is called upon to apply it. "In consequence of that liberty and independence it follows that it is for each Nation to decide what its conscience demands of it, . . . to consider and determine what duties it can fulfill towards others without failing in its duty to itself" (Intro., § 16). If the necessity is "pressing," "extreme" (III, § 122), innocent use is a perfect right; its refusal is an "injury," that is to say, an act demanding reparation. On the other hand, when the case is "doubtful," "we have only an imperfect right," the refusal of which is not an "injury."

The difference between a perfect right and an imperfect right is not, therefore, that between ethics and law, because, according to Vattel, the power of requesting is in itself a right. But, of what use is the right of requesting without the right of enforcing the request? There is a great difference between an imperfect right and a perfect right, between asking and demanding; and on what does it hinge? On a doubt. Is the altruistic duty of rendering assistance compatible with the selfish duty of self-preservation? In that case the right which was imperfect becomes perfect: egoism, now mere arbitrariness and caprice, gives way to altruism. But it rests with the State of which something is asked to make this decision. Just as innocent use is tacitly shown by the consent of the State that grants it, the compatibility of the duty towards another with the duty towards oneself is shown expressly by the treaty which grants to the foreign State what it requests. There is a way of converting an imperfect into a perfect right, namely, by means of a treaty (Wolff, Inst., § 97). "Under the conviction of the little reliance that can be placed upon the natural obligations of political bodies and upon the mutual duties which their moral personality imposes upon them, the more prudent Nations seek to obtain through treaties that help and those benefits which would be secured to them by the natural law, were that law and those benefits not rendered ineffective by the mischievous designs of dishonest statesmen" (II, § 152).

In the school of the Law of Nature and of Nations to which Vattel belongs, the contract plays an important rôle. Just as in public municipal law, under the term social contract it forms the basis of the State, so, under the term treaty it is the basis of public international law. By means of the contract, the State is formed. By means of the treaty, it assures to itself the rights necessary to its development.

Where a right is perfect, treaties are useless. "Treaties by which a Nation merely agrees not to do any evil to the other contracting party, to refrain from any injury or offense, are not necessary and create no new rights, since each of the parties already possesses a *perfect* natural *right* to resist an injury, affront, or real offense of any kind" (II, § 171). On the other hand, when the right is imperfect, it may become perfect by means of a treaty. Although Vattel, holding fast to principles, quotes very few conventions, this conception of the treaty is to him a fundamental one.

Not only do treaties help to transform imperfect into perfect rights, but they also render incontrovertible perfect rights based upon necessity, such as usucaption or prescription, and when the natural law determines only the principle, treaties develop them in detail. For example, "since prescription is attended with so many difficulties, it would be of great advantage if neighboring Nations could come to an agreement on the subject by means of treaties, especially as to the number of years required to support a claim of prescription, since this last point can not as a rule be determined by natural law alone" (II, § 151). Or again: "It may happen that a Nation will consent to occupy certain places only, or to assert certain rights, in a country which is without owner, without caring to take possession of the whole country. Another Nation may then take up what has been thus neglected, but it can only do so on condition that all the rights which have been acquired by the first Nation be left entirely and absolutely untouched. In such cases it is well to come to an agreement by treaty." (II, § 98.)

Such, according to the doctrine of Vattel, is the force and importance of the contract that whatever necessity commands of States in their relations with each other he presumes to be their will; whence the term voluntary Law of Nations which he applies to non-conventional law; that is to say, to the rules governing the interpretation of treaties, to manifestly innocent use, to the law of necessity, and to the restrictions which the desire for peace and respect for the liberty of Nations place upon justice (Intro., § 21).

Having divided the Law of Nations into natural, necessary, or internal law, which is purely ethical and binding only on the conscience (Intro., § 7) and positive or external law (Intro., § 27), Vattel then subdivides positive law into three classes—*voluntary*, *conventional*, and *customary*—all of which proceed from the will of Nations: voluntary law from their presumed consent; conventional law from their expressed consent; and customary law from their tacit consent.

Custom, or tacit consent, like the treaty, helps to transform imperfect into perfect rights. Having only the imperfect duty of receiving consuls, Nations who receive them have the power of refusing them the necessary immunities. "Custom must serve as the rule on such occasions" (II, § 34). Customary law "is founded upon a tacit consent, or, rather, upon a tacit agreement of the Nations which observe it. Hence it evidently binds only those Nations which have adopted it and is no more universal than the *conventional law*" (Intro., § 25). "If this custom be indifferent in nature, much more so if it be useful and reasonable, it becomes binding" (Intro., § 26). Side by side with treaties, then, custom may work towards the transformation of imperfect into perfect rights. But, in comparison with treaties, it is much less efficacious. Unlike treaties, which have a time limit, custom may cease to be binding at any moment; all that is necessary is that the Nations "bound to observe it" declare expressly that they are unwilling to follow it longer (Intro., § 26). Moreover, if it includes anything unjust or unlawful, it loses force, whereas a treaty, even if it is unjust or unlawful, and of no effect in internal law, "upon the conscience" (Intro., § 27), remains no less binding in external law.

Of still less importance than the rôle of custom is that of arbitration: a fact which at first glance is most astonishing. If, between a perfect and an imperfect right, the difference is only that of a doubt, may not that doubt, failing an expressed convention (*treaty*) or a tacit convention (*custom*), be resolved, not by the decision of the State of which something is required, a decision always open to suspicion, but by the impartial opinion of a judge? Not at all. "Since Nations are free, independent, and equal, and since each has the right to decide in its conscience what it must do to fulfill its duties, . . . neither of the interested parties nor other Nations may decide the question. The one who is wrong sins against its conscience; but as it may possibly be in the right, it can not be accused of violating the laws of the society of Nations" (Intro., § 21). Resort to arbitration may be a moral duty, an internal obligation; it is not an external duty, not even an imperfect one. "Is the right in question clear, certain, and indisputable? A sovereign may, if he has the power, boldly prosecute it and defend it without submitting it to arbitration" (II, § 331). And, when "we are not allowed to be so inflexible in questions that are uncertain and open to doubt," it is for each Nation to decide what its situation allows it to do. "Let us never lose sight of what a Nation owes to its own security. To authorize recourse to arms it is not always necessary that all means of conciliation shall have been openly rejected" (II, § 334). "And as, in virtue of the natural liberty of Nations, each has the right to decide in its own conscience how it is to act, ... it belongs to each Nation to judge whether it is in a position to attempt pacific means of settlement before having recourse to arms" (II, § 335).

3. War.

"War is that state in which we prosecute our rights by force" (III, § 1). When a right is perfect, whether naturally, through the transformation of an imperfect into a perfect right, by virtue of custom, or in consequence of a treaty, to violate this right is to do the Nation possessing it an injury which it has the right—a *perfect* one—of resisting, or even of preventing. "And in order to know what should be regarded as an injury, we must understand what are a Nation's rights; in a strict sense, what are its *perfect* rights. . . . Whatever constitutes an attack upon these rights is an *injury* and a just cause of war" (III, § 26).

If men were always reasonable, justice and equity would be their law and their judge. Force is a sad and unfortunate expedient to be used against those who despise justice and who refuse to listen to reason (§ 25).

"Humanity revolts against a sovereign who without necessity or without pressing reasons wastes the blood of his most faithful subjects and exposes his people to the calamities of war when he could have kept them in the enjoyment of an honorable and salutary peace. When to this inconsiderateness, this want of love for his people, he adds the injustice towards those whom he attacks, of what crime, or rather of what dreadful series of crimes, does he not render himself guilty? Answerable for all the evils which he brings down upon his subjects, he is responsible also for all those which he inflicts upon an innocent people—the bloodshed, the pillaging of towns, the ruin of provinces—such are his crimes. Not a man is killed nor a hut burned but he is responsible before God and answerable to Humanity" (III, § 24). War is to be endured, then, only on condition that it is desired by the Nation waging it (§ 4), and that it is based upon a just cause and upon proper motives:

> "Nations which are always ready to take up arms when they hope to gain something thereby are unjust plunderers; but those who appear to relish the horrors of war, who wage it on all sides without reason or pretext, and even without other motive than their savage inclinations, are monsters, unworthy of the name of men. They should be regarded as enemies of the human race, just as in civil society persons who follow murder and arson as a profession commit a crime not only against the individuals who are victims of their lawlessness, but against the State of which they are the declared enemies. Other Nations are justified in uniting together as a body, with the object of punishing, and even of exterminating, such savage peoples" (§ 34).

That a war may be just, two things are necessary: first, that there be a right to be maintained, that is, one must be justified in demanding something of a Nation; secondly, that one can not secure this right otherwise than by force of arms (§ 37). "It is an error no less absurd than pernicious to say that war should decide controversies between those who, like Nations, acknowledge no superior judge. Victory is ordinarily on the side of strength and skill rather than on that of justice" (§ 38).

Possessed with the idea that war is an evil from which a sovereign should guard his people, a terrible prerogative of which he ought not to avail himself, even against a guilty Nation, except in the last extremity, Vattel is very strict with regard to the conditions under which a Nation may have recourse to arms. War is permissible only to avenge an injury received (§ 34), or to avoid one threatened (§ 26); "it is a sacred rule of the Law of Nations that the aggrandizement of a State can not alone and of itself give anyone the right to take up arms to resist it" (§ 43). Confederations seem to Vattel the best means of maintaining the balance of power and thus of preserving the liberties of a Nation (§ 49). If a prince wages an unjust war, everyone has the right to succor the oppressed. War must be preceded by a declaration, the last means of settling differences without the shedding of blood, setting forth the object for which arms are taken up. When war has been formally declared, in perfect good faith as to the justice of their cause, by sovereigns between whom, because of the independence of Nations (§ 70), no one can decide, it becomes legitimate. The distinction between the justice and the injustice of the war ceases to exist in the relations between belligerents; it exists only in those between belligerents and neutrals.

The effect of war is very widespread. Since the sovereign represents the Nation, when one sovereign has declared war against another, the two Nations are enemies and all the subjects of the one are enemies of the other (§ 70). Enemy subjects and enemy property remain such wherever they happen to be. Women and children are to be counted as enemies (§ 72); but they are enemies who offer no resistance, and consequently we have no right to injure their persons, to use violence against them, still less to take their lives (§§ 140, 145). If occasionally an enraged soldier goes so far as to kill women, to massacre children and old men, the officers regret such excesses. Moreover, since war is carried on by disciplined troops, the people, peasants, and townsmen have nothing to fear. Nothing warrants the killing of prisoners, even if it is impossible to guard or to feed them, unless they belong to a ferocious, perfidious, and formidable Nation, or unless they have rendered themselves personally guilty of some crime (§§ 151, 152). He forbids the use of poisoned weapons: "It is indeed necessary to strike down your enemy in order to overcome his designs; but once he is disabled, is there any need that he should inevitably die of his wounds?" (§ 156). "Let us never forget that our enemies are men. Although we may be under the unfortunate necessity of prosecuting our rights by force of arms, let us never put aside the ties of charity which bind us to the whole human race. In this way we shall defend courageously the rights of our country, without violating those of humanity" (§ 158).

Although Vattel admits the right to plunder, at any rate when the enemy has committed some offense against the Law of Nations, he declares none the less that "for whatever cause a country be devastated, those buildings should be spared which are an honor to the human race and which do not add to the strength of the enemy, such as temples, tombs, public buildings, and all edifices of remarkable beauty. What is gained by destroying them? It is the act of a declared enemy of the human race thus wantonly to deprive men of these monuments of art and models of architecture" (§ 168). While recognizing that it is difficult, when bombarding a town, to spare the finest buildings, he recommends that we confine ourselves to battering the ramparts, and he forbids the destruction of a city by bombs, unless there is no other way of reducing an important stronghold or of forcing an enemy to make war more humanely (§ 169). And he concludes thus: "Apart from the case in which there is question of punishing the enemy, the whole may be summed up in this general rule: All acts of hostility which injure the enemy without necessity, or which do not tend to procure victory, are unjustifiable, and as such condemned by natural law" (§ 172). Moreover, when there is question of punishing the enemy, he considers that it must always be for atrocious offenses against the Law of Nations (§ 173).

After having asserted that in positive law every war engaged in according to formula and carried on according to rule is lawful, Vattel returns to the idea that in natural law wars are just or unjust according to their cause, and that the only right of him who wages war comes from the justice of his cause (§ 184). He only has the right to wage war, he only may attack his enemy, take his life, seize his goods and his land, into whose hand justice and necessity have thrust the sword. Such is the dictum of the necessary Law of Nations, or natural law, which Nations are absolutely bound to observe (Intro., § 7). It is the inviolable rule which everyone must conscientiously follow. But how enforce this rule in the disputes of peoples and sovereigns who live together in a state of nature? They recognize no superior. It is for every free and sovereign State to decide conscientiously what its obligations require of it, what it may or may not do with justice. If other States undertake to pass judgment upon it, they strike a blow at its liberty. A Nation, a sovereign, when considering the course to pursue in fulfilling a duty, must never lose sight of the necessary Law of Nations, which is always binding upon the conscience; but when it is a question of considering what may be exacted of other States, it must respect only the voluntary Law of Nations. The first rule of this law is that the rights founded upon a state of war, the legality of its consequences, the validity of the acquisitions made by force of arms, depend, not upon the justice of the cause, but upon the legality of the means employed (§ 190). Such a war gives the conqueror the right to take a city or a province from an enemy, even without his consent (§ 199). After having advised the conqueror to act thus humanely, Vattel, in his political wisdom, observes that "fortunately here and everywhere good policy is in perfect accord with the principles of humanity."

Rivier, an eminent Swiss, has said:[1] "The maxim of neutrality followed by the Swiss Confederation since the sixteenth century has contributed largely to the adoption of legal principles regulating this matter. It is not at all surprising that Vattel has dealt with it in greater detail than have his predecessors." Swiss by birth, a native, that is to say, of a country which at that time had a leaning toward neutrality, bound by ties of birth to Switzerland, by ties of allegiance to Germany, by ties of duty to Saxony—in a word, "the friend of all Nations" (the happy phrase by which in his preface he expresses the desire of his heart and the trend of his mind), Vattel does not want war gradually to spread abroad. Machiavelli advises princes to espouse each other's quarrels with a view to sharing with the victor the spoils of the vanquished. Vattel, a diplomat of the school of Jean-Jacques, urges them, on the contrary, to remain spectators. For the first time the word *neutrality* enters into a treatise on international law. Grotius denotes non-belligerents by a paraphrase in vague terms which clearly shows that no definite doctrine has as yet taken form: *De his qui in bello medii sunt.* Bynkershoek calls them *non-hostes.* Vattel calls them *neutrals* (III, § 103). He very accurately defines neutral Nations in a war as "those who take no part in it, remaining the common friends of both parties." Grotius considers such a condition both difficult and dangerous. Carried away by his distinction between the justice and the injustice of a war, he begs the neutral to do nothing which could increase the strength of him whose cause is evil or impede the progress of him whose cause is just. Vattel, on the contrary, charges neutrals not to favor "either side to the prejudice of the other" (III, § 103). So long as a neutral people wishes peaceably to enjoy the benefits of neutrality, it must show absolute impartiality in every respect toward those at war. Bynkershoek admitted that the neutral may give help simultaneously to both belligerents. Vattel is the first to declare that impartiality consists not in equality of assistance but in absence of assistance. "To give no help, when we are not under obligation to do so; nor voluntarily to furnish either troops, arms, or munitions, or anything that can be directly made use of in war . . . to give no help, and not to give equal help": such is his formula. "For it would be absurd for a State to assist both enemies at the same time": such is his reason.

---

[1] Rivier, *Principes du droit des gens*, II, § 210.

But to this doctrine stated with such firmness he immediately adds two exceptions that weaken it. Remembering the practice of the Swiss, who engage by treaties to furnish men to one of the belligerents, but do not consider that in so doing they risk bringing war upon their country, he makes it the duty of Nations that have previously concluded treaties promising assistance, to live up to this obligation: "When a sovereign furnishes the *moderate* help which he owes in virtue of an earlier defensive alliance, he does not thereby become a party to the war" (§ 105). "In the late war the United Provinces for a long time furnished subsidies, and even troops, to the Queen of Hungary. . . . The Swiss, in virtue of their alliance with France, furnished the King with numerous bodies of troops; yet they live in peace with all

Europe" (§ 101). An agreement made previous to the war is an exception—this is the first restriction which Vattel lays on his clear and well-defined formula of neutrality. Moreover, from the right of all Nations to innocent passage, he draws the conclusion that the granting of a right of way to enemy armies does not violate neutrality. "The right of innocent passage is due to all Nations with whom we are at peace (II, § 123), and this right extends to troops as well as to individuals." But, scarcely has he stated this exception, when he attempts to qualify it. A neutral has the right to refuse passage when he has reason to fear that the army seeks to take possession of the country, or at least to act as owner of it, or that he intends to live there at free quarters (§ 123). Finally, since passage, even when innocent, is required to be granted for just causes only, it will be refused to a belligerent who requests it for a manifestly unjust war, as, for example, to invade a country without reason or pretext (§ 135).

4. Sanction of the Law of Nations.

No one can approach the subject of international law without asking what is its sanction. Wolff, for his foundation, promulgated the hypothesis of a general society of Nations. Vattel, in his preface, rejects this idea:

> "M. Wolff deduces it [the voluntary Law of Nations] from the idea of a sort of great republic (*civitas maxima*) set up by nature herself, of which all the Nations of the world are members. To his mind, the *voluntary* Law of Nations acts as the civil law of this great republic. This does not satisfy me. . . . It is essential to every civil society (*civitas*) that each member should yield certain of his rights to the general body, and that there should be some authority capable of giving commands, prescribing laws, and compelling those who refuse to obey. Such an idea is not to be thought of as between Nations. Each independent State claims to be, and actually is, independent of all others."

Led by his theory of the independence of States into leaving the Law of Nations without any sanction, Vattel, in his preface, flatters himself that, because States do not ordinarily act according to caprice, such a system has no drawbacks. But having thus, in the name of the independence of States, weakened the authority of the maxims of international law, Vattel is not slow to see that it is the right of all Nations to unite against violators of international laws, mischievous Nations, and peoples "always ready to take up arms when they hope thereby to gain something" like those "various German tribes of whom Tacitus speaks."

> *Rights of Nations against those who violate the Law of Nations:*
>
> "The laws of the natural society of Nations are so important to the welfare of every State that if the habit should prevail of treading them under foot no Nation could hope to protect its existence or its domestic

> peace, whatever wise and just and temperate measures it might take. . . . Hence all Nations may put down by force the open violation of the law of the society which nature has established among them, or any direct attacks upon its welfare." (Vattel: Introduction, § 22.)
>
> *Rights of all Nations against a wrong-doer:*
>
> "If, then, there should be found a restless and unprincipled Nation, ever ready to do harm to others, to thwart their purposes, to stir up civil strife among their citizens, there is no doubt but that all the others would have the right to unite together, to discipline it, and even to disable it from doing further harm." (Book II, Ch. IV, § 53.)
>
> *Nations which make war without cause and without apparent motive:*
>
> "Nations which are always ready to take up arms, when they hope to gain something thereby, are unjust plunderers; but those who appear to relish the horrors of war, who wage it on all sides without reason or pretext, and even without other motive than their savage inclinations, are monsters, and unworthy the name of men. They should be regarded as enemies to the human race, just as in civil society persons who follow murder and arson as a profession commit a crime not only against the individuals who are victims of their lawlessness, but against the State of which they are the declared enemies. Other Nations are justified in uniting together as a body, with the object of punishing, and even of exterminating, such savage peoples. Of that character are the various German tribes of whom Tacitus speaks." (Book III, Ch. III, § 34.)

This doctrine is incomplete: Vattel speaks only of the *right* of Nations to take action against violators of the Law of Nations, against wrong-doers, against Nations who are always ready to take up arms when they hope to gain something thereby. He should have said something concerning their *duty*.

III.

SUCCESS OF THE WORK.

"Perhaps," modestly wrote Vattel to a friend while his book was in press, "my work will go through more than one edition. This hope is not so very presumptuous, since I am having only 1,200 copies printed."[1] Vattel's hope was more than realized. After the first edition, dated London, but printed at Neuchâtel under the immediate supervision of the author, a second issued from the press at Leyden. In 1773, another edition appeared at Neuchâtel, enriched by notes written in pencil by Vattel in his own copy. But, published after the author's death and with too great haste, it distressed his friends because of the evident lack of care in its preparation. As this edition seemed to everybody "fit for the grocer," another was soon printed at Amsterdam, through the efforts of a Monsieur D. (C. W. F. Dumas), a Swiss publicist and an ardent republican, in close sympathy with the Revolutionists of America.[2] Almost immediately—in 1777—there followed two other editions, one at Bâle, with notes taken in part from manuscripts of the publisher, the other at Neuchâtel, without these notes, but with a biography of the author.[3]

The book was a success. The philosophy of Leibnitz was in fashion just then, and Vattel was a follower of Leibnitz. He was inspired by his interest in Wolff to translate his book; but he freed it of its dross, and for a tiresome work, that no "respectable man" would have had the patience to read, he substituted a treatise both clear and simple. This was not a dully scholastic work written in the Latin tongue, by a savant for savants, but a book written in a pleasing style by a man of the world, a diplomat, a philosopher, and a man of letters, for kings, ministers, and men of the world.[4] His style has not the compactness of Montesquieu, the dazzling clearness of Rousseau; but he uses the French language—the best filter for clarifying German abstractions that has ever been known. Grotius, the humanist, writing Greek and Latin in the great epoch of the Renaissance, is handicapped by his erudition and overburdened with classic reminiscences. Vattel, the philosopher, writing in the century of the encyclopædists, gives less space to the ancients and more to the moderns. If he calls Xenophon, Plutarch, Cicero, Livy, Tacitus, and even the poets to witness, he appeals also to the French historians, Mezeray and Wateville. It is true that, following the example of Grotius, he discusses again the question whether the Romans should have kept the humiliating agreement of the Caudine Forks (II, § 209); but he is more interested in inquiring whether Francis I was obliged to respect the Treaty of Madrid (I, § 264). In the same section in which he quotes Virgil, he quotes the Memoirs of Feuquières (III, § 178). Grotius valued antiquity above everything. Vattel criticizes the ancients because they "did not acknowledge any duty towards Nations to which they were not bound by a treaty of friendship" (II, § 20).

---

[1] Unpublished letter of Vattel to an unknown friend, May 26, 1757. Library of the city of Neuchâtel.

[2] We can make this identification with certainty by the help of Wharton's *Revolutionary Diplomatic Correspondence*. II, p. 64.

[3] See chronological list of editions of Vattel, pp. lvi–lviii.

[4] Baron de Bielfeld, at a later date, had the same idea: "I wanted to write for a great many people, for princes, and for all those whose birth might call them to take part in the government of States. It is almost certain that the formidable appearance of a system taught by mathematical methods would have frightened them and that they would never have read me at all. The same thing would have happened that happened to the various works of the illustrious Wolff, which, in spite of all their merit, are used more to ornament libraries, to be consulted like a dictionary, than to be read by people of the world and to influence philosophers." (Supplement to *Institutions Politiques*, end of Book II, new edition, 1768, Leyden and Leipzig, p. 564.)

For the absolutism with which the work of Grotius is stamped, Vattel substitutes a high degree of liberalism. To the severities of the former fierce and cruel law of war, he opposes a milder and hence more generous conception. He has the sensitive and philosophic literary spirit of the eighteenth century. Grotius, too antiquated, is henceforth abandoned for this modern, whose book, addressed to all sovereigns in order to flatter none, is dedicated in a noble preface to Liberty: "I was born in a land of which liberty is the soul, the treasure, and the fundamental law." "*Apud liberos tutior*," beneath a Phrygian cap, is on the title-page of the first edition.

"Because of my birth I can be at the same time the friend of all Nations," adds Vattel, in his fine preface. As the mind of the author is sympathetic toward all, the book is of the sort to please many. But, the spirit of the book being the spirit of liberty, it was those Nations in which this spirit was the most strongly developed that welcomed it first and with the greatest good will.

England was the first to discover her ideas in this work. If the first edition of the *Law of Nations* bore the imprint "At London," it was not only an expedient of the book trade, but also a compliment. To Vattel, England is "the illustrious Nation" par excellence. He praises her for being eminently distinguished in all that can make a State prosperous, for holding in her hand, thanks to commerce, the balance of power in Europe. He congratulates her upon "fulfilling her duties of humanity with noble generosity" (II, § 5). He commends her "admirable Constitution" (I, § 24). He rejoices to see "an English King give account to his Parliament of his principal undertakings" (I, § 39). England had twice—in 1688 and again in 1701—changed the order of succession to the throne, wherefore Vattel asserts very clearly that a Nation may change its order of succession (§ 61). His criticism of the power of the Popes, his attacks upon the Catholic Church and the celibacy of the clergy must have pleased the English, who at that time refused to put freedom of belief on the first list of all liberties drawn up by them. In the purely international part of his work, it is true that Vattel, especially in dealing with the subject of a declaration of war—to him a necessary condition of hostilities—opposes the views of English politics; but his doctrine is generally fully in accord with them. A subject of the King of Prussia, he does not hesitate to take sides with Great Britain against Prussia: "A sovereign should not interfere in the suits of his subjects in foreign countries nor grant them his protection except in cases where justice has been denied." Scarcely has Vattel formulated this principle, when, seeking an example, he adds: "The British court set forth this principle very clearly when, during the recent war, certain Prussian vessels were seized and declared lawful prize" (II, § 84). He approves of England's having twice made war upon Louis XIV, the first time, "because he upheld the claims of James II, who had been formally deposed by the Nation; the second time, because he recognized under the name of James III the son of the deposed King." At the time when, in France, Mably, to ruin England, was proclaiming the non-seizable character of private enemy property under an enemy flag, Vattel develops the English doctrine, which allows the property of individuals to be seized in war. A Swiss, living in Europe, in the service of Saxony, he barely touches upon the subject of maritime warfare; and Great Britain, interested as she is in such a subject, is much better pleased with this discretion than with the book, published the following year (1759), by the Dane, Hübner; he, though doubtless better acquainted with the details of maritime law, is much less agreeable to the "illustrious Nation."

So much did Vattel's *Law of Nations* please England that three times—in 1760, in 1793, and in 1797—an anonymous translation was published, with which it appears that William Cobbett was familiar in 1797.

In the United States, a Nation still more enamored of liberty, its success was even greater. From 1758 to 1776 Grotius, Pufendorf, and Burlamaqui were read, studied, and commented upon in the English colonies of America, but Vattel, at that time, seems to have been unknown to them. In 1773, the Law of Nations was taught at King's College (now Columbia University). In 1774 Adams, and in 1775 Hamilton, quote or praise Grotius, Pufendorf, Locke; neither mentions Vattel. But the War of Independence gave the United Colonies the new name of States. A hard task engaged the American people, who, by the study of the Law of Nature and of Nations, were preparing themselves for the great work of independence. Anxious to build upon solid foundations, their statesmen turned to European publicists. Charles W. F. Dumas, a Swiss living in Holland, and an ardent republican, re-read

Vattel with the United States in mind, brought out a new edition with notes inspired by recent events, and sent three copies of it to Franklin. Vattel, replied Franklin, came at the right time:

> "It came to us in good season, when the circumstances of a rising State make it necessary frequently to consult the Law of Nations." (Franklin to Dumas, Dec. 1775.)[1]

The fathers of independence soon felt that they were in accord with the ideas of Vattel. They were pleased with him for praising "the moderation of the English Puritans, who first established themselves in New England," after buying from the Indians the land that they wished to occupy. Although their liberalism, progressively extended to include religious freedom, much exceeded that of England, and, consequently, that of Vattel, they found in the Swiss writer all their maxims of political liberty: the right of a people to separate themselves from a State of which they are a part (I, §§ 201, 202); the obligation of the Nation to assure happiness to all as an end of the State, an obligation which they themselves inscribed in the Constitution; finally, the recommendation of those confederations of Republics to which, taught by Vattel and Rousseau that there they would find a sure guaranty of rest and peace, the United States was, from 1778 to 1787, to trust its fortunes.

From 1776 to 1783, the more the United States progressed, the greater became Vattel's influence. In 1780 his *Law of Nations* was a classic, a *text book* in the universities.[2]

In Germany, on the other hand, where liberal ideas found less favor, his success was not so great, but nevertheless real.[3] Kant quotes him among the authors whom he mentions.[4]

---

[1] Wharton's *The Revolutionary Diplomatic Correspondence*, II, p. 64. In 1827 Chief Justice Marshall said: "When we advert to the course of reading generally pursued by American statesmen in early life, we must suppose, that the framers of our Constitution were intimately acquainted with the writings of those wise and learned men, whose treatises on the laws of nature and nations have guided public opinion on the subjects of obligation and contract." (Ogden *v.* Saunders, 12 Wheat., 213, 353.)

Professor J. B. Thayer, of Harvard, in his *Cases on Constitutional Law*, Cambridge, 1895, I, p. 951, mentions the existence in the Harvard Library of a copy of the Amsterdam edition of Vattel, entered as from B. Franklin. Another copy was presented by Franklin to the Library Company of Philadelphia. Among the records of its Directors is the following minute: "Oct. 10, 1775. Monsieur Dumas having presented the Library with a very late edition of Vattel's *Law of Nature and Nations* (in French), the Board direct the secretary to return that gentleman their thanks." This copy undoubtedly was used by the members of the Second Continental Congress, which sat in Philadelphia; by the leading men who directed the policy of the United Colonies until the end of the war; and, later, by the men who sat in the Convention of 1787 and drew up the Constitution of the United States, for the library was located in Carpenters' Hall, where the First Congress deliberated, and within a stone's throw of the Colonial State House of Pennsylvania, where the Second Congress met, and likewise near where the Constitution was framed. (George Maurice Abbott, *A Short History of the Library Company of Philadelphia*, 1913, p. 11.)

[2] Jesse S. Reeves, *The Influence of the Law of Nature upon International Law in the United States*, American Journal of International Law, 1909, p. 551.

[3] *Cf.* Ompteda (Baron von), *Litteratur des gesamten sowohl natürlichen als positiven Völkerrechts*, Ratisbon, 1785, p. 338.

[4] A skeptical quotation, however, like one of those "cold comforters" to whom we turn to justify a declaration of war, although their code can not have the least legal force.

In Switzerland, the work of Vattel was favorably received. But his name is eclipsed by two others: that of the writer who applied the Cartesian method to legal exegesis and revived the study of international law, Jean-Jacques Burlamaqui, and that of another and more illustrious Jean-Jacques, both of whom excel the literary diplomat who wrote only for amusement. Between Burlamaqui, an author of the school of natural law, and Rousseau, Vattel's glory is somewhat dimmed.[1]

"Friend of all Nations," brought up, moreover, on the teachings of the physiocrats and the encyclopædists, Vattel did not forget to insert in his book a compliment to France:

> "It is the part of a civilized Nation to receive foreigners with kindness and courtesy, and to manifest in every way an attitude of friendliness. . . . No Nation deserves higher praise in this respect than France; foreigners receive nowhere else a reception more kindly, more adapted to keep them from regretting the immense sums that they yearly spend in Paris" (II, § 139).

Although the touch at the end rather diminishes the delicacy of the compliment, France nevertheless received her share of eulogy from the friendship of Vattel. But another book apeared at this time, the brilliancy of which eclipsed that of the *Law of Nations.* The philosopher of Geneva concluded his *Contrat social* thus: "After having set forth the true principles of political law and after having tried to establish the State upon its basis, it remains to support the State by its foreign relations, the subject-matter of the Law of Nations";[2] a conclusion which was but a transition, a foreshadowing of a work on commerce, war and conquest, public law, confederacies, negotiations, and treaties, of which Count d'Antraigues[3] later gathered together the fragments. How could the French public welcome Vattel when Rousseau gave it hopes of an International Contract, postulated by the Social Contract?[4] Vattel's *Law of Nations* appeared in 1758. In the beginning of this same year, Rousseau's publisher, Marc-Michel Rey, urged him to give him his *Principes du droit de la guerre*.[5] While waiting for Rousseau's work on this subject, of which his *Contrat social*, corresponding to Book I of Vattel, was, so to speak, only the first part, the French reader could give but indifferent attention to the work of the citizen of Neuchâtel who did not know as well as the Genevan how to wield his language.

---

[1] "It was from Geneva that the *Spirit of Laws* and the *Social Contract* issued." (Borgeaud, *Histoire de l'Université de Genève.*)

[2] J.-J. Rousseau, *Contrat social,* Book IV, Ch. IX, Conclusion.

[3] Léonce Pingaud, *Un agent secret sous la Révolution et l'Empire,* Paris, 1893.

[4] *Cf.* Winderberger, *Essai sur le sytème de politique étrangère de Rousseau,* Paris, 1899.

[5] "My *Principles of the law of war* is not ready." Answer of J.-J. Rousseau to his publisher, Marc-Michel Rey, March 1758. (*Unpublished letters of J.-J. Rousseau to Marc-Michel Rey.*, published by Bosscha, p. 32.)

Although at this time in Switzerland, in Germany, and (outside Europe) in the United States, the Law of Nations was a subject of great importance, in France, on the contrary, it was neglected. "Our Law Faculty is very poor," writes Diderot some twenty years later; "we read no more of the Law of Nations than if there were none to read." And, shortly after the appearance of *Emile*, Rousseau, in passing, criticized the French for this: "Their parliaments and their courts seemed to have no idea either of Natural Law or of the Law of Nations; and it is very remarkable that in this great kingdom, where there are so many universities, so many colleges, so many academies, and where so many useless subjects are taught with such care, there is not a single chair of natural law" (letter to M. de Beaumont). How, then, could the French have taken an interest in Vattel's book?

In France philosophers spoke of the Law of Nations only to ridicule it. Voltaire ironically compared it to those portraits of our ancestors which we respect but which we never look at: "It seems as if these *Treatises on the Law of Nations, of war, and of peace*, which have never helped in any treaty of peace, nor in any declaration of war, nor in assuring a right to any man, are a consolation to people for the evils that politics and force have brought about. They give an idea of justice, just as we have portraits of celebrated persons whom we can not see."[1] And again: "Nothing, perhaps, will tend more to make a mind inaccurate, dull, confused, uncertain, than the reading of Grotius, Pufendorf, and almost all the commentators on public law." Diderot adds: "The Law of Nature is limited by civil law; civil law by international law, which, in turn, ceases when war begins."[2]

Moreover, the vehemence of Vattel's attacks upon the Catholic Church was not sufficient to win over the philosophers, whose atheism was no more in accord with his Protestantism than with any other religion. Among these philosophers, La Chalotais was perhaps the only one in France who read Vattel at this time. Voltaire skimmed him carelessly, without finding him to his taste. Five years after the work appeared, Voltaire wrote to La Chalotais from Ferney, February 28, 1763: "I do not know why you rate the book of M. Vattel among necessary ones. I have thought of it only as an indifferent imitation, and you will make me reread it."[3]

If, however, in France, the "leaders of Nations," for whom Vattel wrote, had neither welcome nor sympathy for a work which, unlike that of Grotius, was not dedicated to the King of France, such was not the case in Scandinavia. There the book was well received, if we may judge by this passage from Hübner, the Dane, who, in writing on maritime law, a subject somewhat neglected by Vattel, says rather condescendingly:

---

[1] Voltaire, *Dictionnaire philosophique*, word *Droit*, section on public international law.

[2] Diderot, *Plan de l'Université pour le Gouvernement de Russie.* Works published by Auzat, III, p. 492.

[3] Voltaire, *Correspondence*, of that date.

> "The only writer of this kind who mentions it after Grotius, is M. Vattel, whose work, rather a large volume entitled *The Law of Nations*, appeared some time since. As this book, in many respects deserving of esteem, did not come to my attention until I had finished my work, I was not able to consult it at the time, nor to profit by what it says on my subject; besides, its author seems to me too sincere and too intelligent for me not to presume that he will change his mind on some points, when he has read and examined attentively my principles and my reasons, set forth in these pages."[1]

---

[1] Hübner, *De la saisie des bâtiments neutres*, The Hague, 1759, pp. 16, 17.

IV.

AUTHORITY OF VATTEL.

After his first welcome, greater in some countries than in others, but on the whole favorable, especially in England and in the United States, the authority of Vattel increased as the principles of political liberty, upon which his work was founded, not only acquired greater strength in America, but were developed in France as well.

In England, his influence upon jurisprudence was from the beginning so great that as early as 1799 the renowned English judge of prize cases, Sir William Scott, declares:

> "I stand with confidence upon all fair principles of reason; upon the distinct authority of Vattel, upon the institutes of other great countries, as well as those of our own country, when I venture to lay it down that, by the Law of Nations as now understood, a deliberate and continued resistance to search on the part of a neutral vessel to a lawful cruiser is followed by legal consequence of confiscation."

The passage of Vattel referred to by Sir William Scott is the following (Book III, Chap. VII, § 114):

> "The carriage of contraband can not be prevented unless the belligerent searches the neutral ships which he meets at sea. Hence follows the right to search them. Certain powerful Nations have at times refused to submit to this search. At the present day a neutral vessel which should refuse to allow itself to be searched would for that reason alone be condemned as lawful prize."

Of all the authors, even the English who have written upon the Law of Nations, not one is more often nor more copiously quoted than Vattel. Whatever may be the opinion of Mackintosh, Ward, Manning, Phillimore, Hall, Travers Twiss, Westlake, Lawrence, Oppenheim on the merits of his work, none of the English masters of the Law of Nations who have followed, from the nineteenth century to the beginning of the twentieth, has ever questioned the value of his authority; an authority to be compared in the formation of English international law with that of Pothier in the interpretation in the nineteenth century of the French Civil Code.[1]

Moreover, in all great questions of international law, the English judge has always been ready to consider the opinion of Vattel; and in all important cases brought before him lawyers have been particular to invoke Vattel's authority.

---

[1] It is enough to consult the table of contents with which most of these works are provided to perceive the exceptional importance which the opinion of Vattel possesses in English international law. See especially the indexes of Hall, *A Treatise on International Law*, 6th ed., Oxford, 1909; and of Robert Phillimore, *Commentaries upon International Law*, 1854.

His authority is chiefly due not so much to the originality of his thought as to the reasonableness of his solutions; not to the novelty of his judgment, but rather to the exactness of his description of usages. Above all is it due to the fact that having lived during the Seven Years' War, in a great era of international law, when the customs of war and of peace were crystallized into the form in which modern civilization was later to conceive and conserve them, his opinion is given, to quote Sir William Scott,[1] "as a witness as well as a lawyer," a point upon which Phillimore[2] also dwells.

In the United States the authority of Vattel is at least as great as in England. From the day when, thanks to the parcel sent by Dumas to Franklin, Vattel made his entrance into American libraries, he was followed as the most competent, the wisest, and the safest guide, in all the discussions of Congress, in all the trials in court, and in diplomatic correspondence, especially that concerned with questions of legality.

In all the important international disputes which arose from the emancipation of the thirteen United Colonies of America, Vattel was always appealed to, sometimes on both sides of the same question.

Does a question arise concerning the right, claimed by the laws of individual States, of suspending during the continuance of the war the payment of debts owed by United States citizens to British subjects? It is Vattel who is at once quoted (Bk. III, § 77): "The sovereign has naturally the same right over debts owing by his subjects to the enemy. He may therefore confiscate such debts if the payment falls due during the war; or at least he may forbid his subjects to pay such debts as long as the war lasts." But Vattel took care to add, contrary to Grotius, Pufendorf, and Bynkershoek, that "all the sovereigns of Europe have been led to be less rigorous on this point in the interest of promoting and protecting commerce. And once this relaxation has become a general custom, a sovereign who should act contrary to it would violate the public faith; for foreigners, in lending money, act on the firm persuasion that the general custom will be followed." And such is the authority of Vattel that Camillus (Hamilton) adopts his opinion on this subject.

Does the question arise of settling with Spain the right of the United States to navigate the Mississippi, the upper portion of which it owns? The United States appeals not only to Grotius, but also to Vattel, who recognizes the right of innocent passage. And in the end, by the treaty of San Lorenzo el Real (1795), Spain does open the Mississippi, between Florida and Louisiana, to the citizens of the United States (*cf.* Vattel, Bk. I, § 292; Bk. II, § 123, 139).

---

[1] *The Maria,* 1, Rob., p. 363.

[2] *International Law,* 1854, I., p. 83. Phillimore explains in this connection how the authority of an author is determined:

"The value ascribed to the opinion of each writer, in the event of there being a difference between them, is a point upon which it is impossible to lay down a precise rule; but among the criteria of it will be, the length of time by which it is (as it were) consecrated, the period when it was expressed, the reasoning upon which it rests, the usage by which it has been since strengthened, and to the previous existence of which it testifies."

When, in 1793, it becomes necessary to urge, against the strange enterprises of an indiscreet French Minister, the over-officious citizen Genet, the clearly defined limits of a genuine and dignified neutrality, it is to Vattel that Washington and his counsellors appeal. Genet had established prize courts in American ports; moreover, he asserted his right to arm privateers without the government's having the right to stop them, and to enroll American citizens without the United States having the still unsettled right of neutrality. It is to Vattel that the American Executive turns for advice, to which this extraordinary representative of France replies with impertinent ignorance that he can not trouble himself with these *diplomatic subtleties*, nor *these aphorisms of Vattel*.[1]

But the opinion of Vattel carries the day; the courts before which the question is brought decide in favor of the measures adopted by the Executive. Genet is recalled; and, with Washington, Vattel triumphs.

From this moment the authority of Vattel in the United States continues to increase. Congressmen appeal to it. In 1794, during a debate in the House of Representatives on the bill amending the federal criminal law relative to preserving neutrality in the war between France and Great Britain, Mr. Smith, of South Carolina, expresses surprise that Mr. Madison could disagree with him as to the obligations of the United States, in virtue of the Law of Nations, after he has quoted Vattel.[2] In 1797, Mr. Swanwick, of Pennsylvania, speaking ironically of the Law of Nations, said: "If Vattel is not in favor of our opinion, we turn to De Martens."[3]

The authority of Vattel is so great in the courts that a lawyer, Patrick Henry, before pleading at Richmond, in 1790, in the United States Circuit Court, sends his grandson sixty miles on horseback to fetch the work that will enable him to convince the judges.[4]

In 1781, in the case of *Miller* v. *Resolution*, when among other points it had to be determined whether the articles of the Capitulation of Santo Domingo were binding on the United States, as allies of France, to the extent of exempting the property of English subjects residing in Santo Domingo from the risk of capture, the Federal Court of Appeals said: "Vattel, a celebrated writer on the laws of Nations, says, 'when two Nations make war a common cause, they act as one body, and the war is called a society of war.' "[1] Whence the court held that among allies agreements with the common enemy, when they tend to accomplish the object of the alliance, bind both at the same time.

---

[1] Jefferson, Secretary of State, to Mr. Morris, August 16, 1793, in *Writings of Thos. Jefferson*, IV, p. 34.

[2] *Annals of Congress*, 3d Congress, p. 754.

[3] *Annals of Congress*, 4th Congress, 2d session, pp. 2230 *et seq.*

[4] *Patrick Henry and the British Debt Case*, "The Green Bag," 1911, p. 405.

In 1814, in the case of *Brown* v. *United States*,[2] the great Judge Marshall, in the name of the majority of the court, declared that English property, found on United States soil at the commencement of hostilities, could not be condemned as enemy property without a law decreeing its confiscation. He quoted Vattel in support of his opinion. Judge Story dissented, but based his dissenting opinion on Vattel also: "Vattel has been supposed to be the most favorable to the new doctrine. He certainly does not deny the right to confiscate; and if he may be thought to hesitate in admitting it, nothing more can be gathered from it than that he considers that, in the present times, a relaxation of the rigor of the law has been in practice among the sovereigns of Europe." And he adds: "Of the character of Vattel as a jurist, I shall not undertake to express an opinion. That he has great merit is conceded; though a learned civilian, Sir James Mackintosh, informs us that he has fallen into great mistakes in important 'practical discussions of public law.'"

When a jurist is, as here, appealed to on both sides of the same case, it is incontestable proof of his authority. And when this authority withstands doctrinal criticism—that of Sir James Mackintosh—it means that it is firmly established.

Cases where the authority of Vattel has determined the decision of the judge could be many times multiplied. In the matter of eminent domain and dispossession for public purposes, Vattel (I, § 244) is quoted;[3] likewise when it is a question of prescription,[4] of the nature and object of war, of the constituent characteristics of the State, or of the rights over bays.[5] And, when the authority of Vattel is so great in the domain of questions arising within the Union, whether between the State and the individual, or between State and State, we can understand the weight of his authority, both in diplomatic correspondence and in the settlement by arbitration of the important international disputes to which the United States is a party.

Quoted on almost every page by the author of the first work on international law in the United States, Chancellor Kent, frequently appealed to by Wheaton and by the authors who followed him, Halleck, Hershey, Wilson, and in the digests of Wharton and of Moore, Vattel is, in the United States, the undisputed master of traditional doctrine:

---

[1] 2 Dallas, 15.

[2] 8 Cranch, 110.

[3] *Kohl et al.* v. *United States*, Supreme Court, 1875 (91 U. S., 367).

[4] *Virginia* v. *Tennessee*, 148 U. S., p. 503, quoted in favor of prescription between States; Vattel, *Law of Nations*, Bk. II, Ch. XI, § 149.

[5] *United States* v. *The Active*, 24 Fed. Cases, 755; *Handly's Lessee* v. *Anthony*, 5 Wheat., 374. *Keith* v. *Clark*, 97 U. S., 454. *The Alleganean*, Court of Com. of Alabama Claims 1885, 4 Moore Int. Arbitrations, 4333.

> "Vattel's treatise on the Law of Nations is quoted by judicial tribunals, in speeches before legislative assemblies, and in the decrees and correspondence of executive officials. It is the manual of the student, the reference work of the statesman, and the text from which the political philosopher draws inspiration. Publicists consider it sufficient to cite the authority of Vattel to justify and give conclusiveness and force to statements as to the proper conduct of a State in its international relations."[1]

Thus expresses himself, in 1913, the author who, in the United States, has most recently considered the authority of Vattel. It is true that the author speaks of this authority as a thing of the past, but we have deemed it proper to use the present tense in the foregoing quotation. If, as he contends, there has been a certain falling off in the authority of Vattel in America, C. G. Fenwick is the first to observe that it is only by certain signs, still very faint, that the diminution of this authority can at present be perceived.

In France, Vattel never enjoyed an authority comparable to that which he had in the United States or even in England. How could he succeed when most of his doctrines were favorable to England, and when the same year (1758) there appeared a *Droit public de l'Europe fondé sur les traités*, the author of which proclaimed the more forcibly the inviolability of enemy private property under an enemy flag because he hoped, by this reform, so favored by economists, to weaken the political power of Great Britain? But, after 1789, Vattel attained greater importance.

On two occasions—in 1793, and again in 1795—Abbé Grégoire made a proposition in the Convention for a *Declaration of the Law of Nations*, corresponding to the 1789 declaration of the rights of man and of the citizen. This was not a code, but the rudiments of a codification proclaiming certain general and positive principles. He is so evidently actuated by the ideas of Vattel that in his statement of reasons in 1795 the name of the jurist of Neuchâtel is mentioned more than once: "It is to be regretted," says Grégoire, "that the author of the *Contrat Social*, after having laid down a Code for every political society, has not made one for Nations." Unable to follow Rousseau, Grégoire follows Vattel. He adopts from him the distinction between the voluntary Law of Nations and the necessary Law of Nations. "A dwarf as well as a giant is a man," says Grégoire. "Nations are by nature equal. . . . A dwarf is as much a man as a giant is," Vattel had said (Intro., § 18). "A Nation should act towards other Nations as it would have others act toward it," says Grégoire; "what a man owes to another man a people owes to other peoples." "Let each give to the others that of which they are in need," Vattel had said (Bk. II, § 3).

---

[1] Chas. G. Fenwick, *The Authority of Vattel*, American Political Science Review, Aug. 1913, p. 395.

According to Vattel, a Nation is the one and only judge of disputes concerning its own government, and no foreign Power has any right to interfere. Hence Articles VI and VII of the Declaration: "Art. VI: Each Nation has the right to organize and to change the form of its government. Art. VII: A Nation has not the right to interfere in the government of other Nations." Articles XII, XIII, and XIV of the Declaration are stated thus: "Art. XII: A Nation has the right to refuse entrance into its territory and to expel foreigners when its safety so requires." "Art. XIII: Foreigners are subject to the laws of the country and are punishable by them." "Art. XIV: Banishment for crime is an indirect violation of foreign territory." Art. XII sums up the rules in regard to foreigners laid down by Vattel (Bk. II, §§ 99 and 100). Art. XIII is composed of the two heads of § 101 and § 102 of the same book merely placed in juxtaposition. Vattel (Bk. I, § 230) had already said on this subject: "It is for each Nation to decide whether it is or is not in a position to receive an alien." Articles IX and XX of the Declaration are thus expressed: "Public agents sent by a Nation are independent of the laws of the country to which they are sent in all that concerns the object of their mission." Art. XX: "There is no order of precedence among the public agents of Nations." This is the exact reproduction of Bk. II, Ch. III, of Vattel: "Of the dignity and equality of Nations, of their titles and other marks of respect," with this difference—that Vattel allows the precedence of ranks determined by custom, while Grégoire revolutionizes the protocol. Bk. II, Ch. XI, of Vattel "on usucaption and prescription among Nations" suggested (§ 143) Art. XI of the Declaration: "immemorial possession establishes the right of prescription among peoples."

It would be useless and perhaps unkind to Grégoire to follow this comparison further. He owes his ideas, sometimes even his words, to Vattel. Such is the bond of thought between them; such is also the legal authority of the diplomat of Neuchâtel that in 1795 Ruhl, after having spoken in the Convention on the side of Grégoire, concludes thus: "I end by asking that the Declaration . . . be adopted, especially since many of its principles are to be found most clearly developed in Vattel and Burlamaqui."[1]

Nor is there any doubt that Napoleon read Vattel, although he is not on the reading list of the artillery officer of Valence, and although his name does not appear in his correspondence, even in the *Mémoire sur les neutres.* The vogue which the name of Vattel enjoyed at the end of the eighteenth century on account of his liberal ideas, which, in spite of his English bias, were in accord with the principles of the French Revolution, is shown by the imitation, at the beginning of the nineteenth century, of Vattel's *Law of Nations* by a second-rate writer who at that time was expounding the French doctrine. In publishing his *Institutions du droit de la nature et des gens*, Gérard de Rayneval makes use of Vattel's name: "The arrangement of my work is not new; it is almost that of Vattel, who, in his turn, borrowed it from the celebrated treatise of Wolff."[1] But the liberal democratic ideas which gave Vattel his hold on the men of the Revolution did not serve to recommend him after the establishment of the Empire. At the same time the English bias of his mind and doctrines alienated French readers. The former political director in the Ministry of Foreign Affairs, Count d'Hauterive, who, as custodian of the archives, directed the reading of young diplomats, is hard on the Prussian King's minister at Berne: "Vattel," he says, "is a more recent writer than Pufendorf, Barbeyrac, and Wolff; but his work is not on that account of any greater assistance. He is diffuse, full of contradictions and inconsistencies, and"—this is perhaps the reason for his severity—"he allows his partiality for England to creep into every page." Finally, as the finishing stroke, to dispatch Vattel by a comparison he adds: "A work written with much less ostentation and display, but with much more discernment and good sense, is that of M. de Rayneval, under the title *Institutions du droit de la nature et des gens.*"[2]

---

[1] Rivier, *Principes du droit des gens*, I., p. 40; Nys, *Le Droit des gens et la Révolution française*, III; *La Société nouvelle*, Sept. 1891; G. F. de Martens, *Précis du droit des gens moderne de l'Europe*, preface of the German edition of 1796 (*Einleitung in das positive europäische Völkerrecht*).

Under English influence Vattel, whose work had never been published in France except in unimportant editions at Nîmes in 1793, and at Lyons in 1802, made his definite appearance in that country in 1835, in an edition due to Hoffmanns and given to the public by Royer-Collard. Three years later came another edition from Pinheiro-Ferreira, and finally, in 1863, that of Pradier-Fodéré in three volumes. At that time no one in France undertook to write a treatise on international law. Individual monographs were published, among the most important of which were *l'Histoire des origines, des progrès, et des variations du droit international maritime* (1858), and *Les droits et les devoirs des nations neutres en temps de guerre maritime* by L. B. Hautefeuille. French science has no work on the subject as a whole. That of Vattel takes the place of one. As he supplies in the French language a deficiency in French science, Phillimore is misled and by a curious mistake supposes Vattel to be a Frenchman:

---

[1] G. de Rayneval, *Institutions du droit de la nature et des gens*, preface.

[2] *Conseils à un élève du Ministère des Relations Extérieures*, a work printed only in proof and in numbered copies, all kept in the Archives and to be consulted only in the custodian's room or in the office of the Director. The author of these *Conseils*, Count d'Hauterive, a Director in the first Directorate, just before the Peace of Amiens, was for a short time, in 1809, chargé ad interim of the Ministry. From 1807 to 1830 he had charge of the Archives. It was in this capacity that he wrote these *Conseils*, which no library possesses, but which the *Revue d'histoire diplomatique* published in 1901, p. 161.

> "If Valin, Domat, Pothier, and Vattel be opposed to the pretensions of France—if Grotius and Bynkershoek confute the claim of Holland . . . if Heineccius, Leibnitz, and Wolff array themselves against Germany, . . . it can not be supposed . . . that the *argumentum ad patriam* would not prevail."[1]

Having begun his studies in the Law of Nations with an edition of Vattel, Pradier-Fodéré, the author of the most voluminous, but never completed, treatise on international law that has appeared in France, often quotes Vattel in the seven volumes of his *Traité de droit international public européen et américain*. Chrétien, Mérignhac, Despagnet, Bonfils mention him, though Mérignhac and Chrétien give him less space than do Bonfils and Despagnet. Pillet, in his *Droit de la guerre*, considers him at length, because he finds him more humane and more sensible than Grotius.[2] In some special problems—extradition, diplomatic immunities—writers and courts quote him; but the place of public international law in French jurisprudence is so far from equaling that which it finds in English jurisprudence and especially in American jurisprudence, public international law—at least as expounded in general treatises—is so little developed in comparison with other branches of French legal science that the authority of Vattel is not as much in evidence, not as vital, as in English and American law; but it is at least more active than that of any other writer on the Law of Nations; and that is sufficient to warrant our saying that, by comparison, Vattel occupies at the present time a more important place in the formation of French law than any other writer prior to our day. "Even to-day," says Chrétien, "Vattel is more often quoted and consulted than his model or than Grotius himself."[3]

In Germany the influence of Vattel is genuine. But the *Précis du droit des gens moderne de l'Europe* of G. F. von Martens, *Das Europäische Völkerrecht der Gegenwart* of Heffter, and especially *Das moderne Völkerrecht der civilisirte Staaten als Rechtsbuch dargestellt* of Bluntschli (1869) have exerted much more influence upon German thought. On diplomatic immunities, on extradition, on the law of war and of neutrality, Bluntschli quotes Vattel, but in no instance does he lay much stress upon him.

---

[1] Phillimore, *Commentaries*, I, p. 84, 1854.

[2] Pillet, *Droit de la guerre*, Paris, 1893, I, p. 141.

[3] Chrétien, *Principes du droit international public*, 1893, p. 59.

The Italians likewise mention him. Although Vattel has been translated only once into Italian—in 1815—Italy respects in Vattel an author "who has had and possesses even to-day no little authority, both in theory and in practice."[1]

Finally, in Spain, into the language of which country he has been translated (in 1822 and in 1836), Vattel has acquired an influence greater than that of any other author.

And his influence extends as far as the Low Countries, Denmark, Norway, Sweden, and Russia.

---

[1] Dionosio Anzilotti, *Corso di Diritto Internazionale*, I, 1914, p. 9. *Cf.* Mancini, *Della nazionalita come fondamento del diritto delle genti*, January 22, 1851, in *Diritto internazionale*, Prelezioni di P. S. Mancini, Napoli, 1873: "The unpopular dryness of this method led Vattel a few years later to bring out a French rendering of the doctrine of Wolff and to offer a sort of compendium of it, which fell into the opposite fault through a too superficial scientific method and through frequent wavering and uncertainty in the application of principles. *Notwithstanding this, Vattel continues to be even at the present time the oracle of statesmen.*"

V.

VALUE OF THE WORK.

Published, translated, quoted again and again, Vattel has certainly won a success equal to that of Grotius, perhaps even greater. Between the two minds, however, no comparison is possible. Grotius possesses genius; Vattel has talent. Grotius who, as a child of fourteen, sustained his theses on mathematics, jurisprudence, and philosophy; who at twenty-four wrote his *Mare liberum;* Grotius, whose erudition was so great that the numerous Greek and Latin quotations which run all through his *De Jure belli ac pacis* were all made from memory at a time when, a refugee in France, he was writing in the country near Senlis far from a library; Grotius, who would have made a name for himself in poetry and in theology had he not won still greater renown in the law, far and away excels Vattel, an adapter, graceful and accomplished, but pleasing rather than strong, and with more of delicacy than of power, of whom nothing will remain except his legal treatise, not even the dainty volumes in which, with the wit of the salon, he dallied with the Muses, and which only his *Law of Nations* has kept from total oblivion. And if, after having compared the two as men, truly a crushing process for Vattel, we compare their works, the result is still more unfortunate: Grotius is a creator, his theories are new theories; his system, though full of suggestions of antiquity, is the expression of personal ideas, either his own or those of his time. Vattel, on the contrary, is an adapter. His ideas are not his own. Wolff, whom he adapts, though not as great as Grotius, is certainly superior to the adapter. Everyone who has read Grotius, Wolff, and Vattel is surprised at the place held in the doctrine and in the jurisprudence of international law by the jurisconsult of Neuchâtel. The man seems to all to be second rate, while his influence, on the contrary, is of the first importance.

Success has favors to bestow; Vattel has been, in this respect, most fortunate. He has reached a height that would doubtless have surprised himself.

. . . . . .

And since posterity has been kinder to Vattel than to any other, the writers who have followed him, the philosophers and jurists who have studied him, have shown themselves both surprised at his influence and severe in their criticism. Vattel is quoted continually; there is not a controversy where he does not appear; but his place is far from being as important in the history of the doctrines of the Law of Nations as his authority is great in jurisprudence, whether national or international.

His work was not yet forty years old when it was subjected to the keen criticism of one of his compatriots and relatives, Baron Chambrier d'Oleires.[1] At the end of the eighteenth century, Georg Friedrich von Martens, in his *Précis du droit des gens*, a book which had a profound influence on the development of the science, scarcely mentions Vattel. Rayneval,[2] who makes use of Vattel's plan, had no influence upon the evolution of the Law of Nations. Most of the historians of international law barely glance at the adapter, or as some call him, the translator,[3] of Wolff. Those who take time to judge his work praise its form, its elegance of style, its clearness of exposition. But this praise is followed immediately by qualifications, criticisms, even censures.

In Germany he is accused of following his model, Wolff, too closely, not only in the arrangement of subjects, but even in the sequence of ideas—in short, of being a too faithful, almost a servile, imitator. As he wrote for statesmen, clearly and succinctly, it followed that he was often superficial;[4] he is blamed for not having gone deeply enough into the subjects of which he treats. "The work of Vattel is only a bare, nay, even a thoroughly superficial, though clear and intelligible enough, expression of the scientific character of the Law of Nations, stripped of its Wolffian tendencies." And again, "In the filter of Vattel, the invigorating mineral water of Wolff" (it is a German who speaks) "has been transformed into a water clear but tasteless."[5]

In England, from 1795 on, Vattel was severely criticized; his treatise "does not appear by any means to preclude the necessity of studying the works of his masters."[6]

Bentham takes him vigorously to task. In letters to Jabez Henry, the great thinker criticizes Vattel for stating propositions that are "old-womanish and tautological," for building castles in the air, and, when he says something, for saying it with so dull a perception of the principles of utility that his statement resolves itself into a formula like this: "It is not just to do that which is unjust."[7] And another English jurist, in 1849, adds: "He is more frequently cited than any other writer because he is more accessible; and because his doctrines are so loosely expressed that it is easy to find in his book detached passages in favor of either side of any question."[8]

---

[1] Chambrier d'Oleires, *Essai sur le droit des gens* (s. l., 1795), 109 pp.

[2] Gérard de Rayneval, *Institutions du droit de la nature et des gens*, Paris, year XI, 1803. Preface, pp. i, v, x.

[3] J. Peuchet, *Du commerce des neutres en temps de guerre* (translated from the Italian of Lampredi), Paris, 1802, p. 59.

[4] H. von Gagern, *Kritik des Völkerrechts*, Leipzig, 1840, p. 132.

[5] Kaltenborn von Stachan, *Kritik des Völkerrechts, nach dem jetzigen Standpunkt*, Leipzig, 1847, p. 78.

[6] R. Ward, *An Inquiry into the Foundation and History of the Law of Nations in Europe from the Time of the Greeks and Romans to the Age of Grotius*, London, 1795, II, p. 625.

[7] *Works of J. Bentham*, published under the superintendence of his executors, J. Bowring, Vol. X, p. 584. See Nys, *Notes inédites de Bentham sur le droit international*, Law Quarterly Review, I, 1885, p. 225.

[8] Wildman, *Institutes of international law*, London, 1849, p. 32.

In France, Vattel has received the too faint praise of those who systematically refuse to see in him more than the popularizer of Wolff, an author more often quoted than Grotius, but less worthy of quotation because less powerful.[1]

In Russia, the same criticism awaits Vattel:

> "The absence of firmly established principles and continual contradictions constitute the chief faults of Vattel. He devotes a considerable portion of his book to dissertations which have no connection whatever with international law. . . . From the scientific point of view, he has no claims which can justify the rank that has been accorded to him side by side with Grotius and other masters of the science."[2]

Such is the criticism upon Vattel of the clear-minded but slightly superficial jurist-diplomat of St. Petersburg and The Hague, a man better qualified than any other to understand the diplomat of Berne and jurist of Neuchâtel.

The further north one goes, the less Vattel is understood: "As, at the time of the publication of his work," writes an able judge, "there was no other so important nor so applicable to the exigencies of the time, he soon made the literary conquest of the whole world; he was considered one of the fathers of international law, of first importance after Grotius, and almost a second founder of modern international law, a reputation which he long retained until the time when more severe criticism pointed out his weaknesses. These are such that one may well ask oneself whether the appearance of Vattel has really been of benefit to international law or has contributed to its progress and to its clear comprehension in Europe."[3]

Severe words these, which, if considered as applying to certain portions of the work, would be just, but which, as an impression of the whole, are an exaggeration.

First of all, let us cease criticizing the work for its lack of originality! If true, the author, honest man, admitted it so cheerfully that it would be unjust on the part of critics—astonished, perhaps even irritated, by his success—to tax him with it now that he is dead. But we must not think that he has not, because he does not parade them, more ideas of his own than many who lay claim to originality.

Leaving the path followed by Grotius and Wolff, he substitutes for the personality and sovereignty of the prince the personality and sovereignty of the State; he holds that the Nation is founded on the consent of the governed; he recognizes the fact that no man can be forced to remain forever in allegiance to the same prince or the same State, but can leave his country and establish himself elsewhere, when, "by so doing, he does not endanger the welfare of his country." Giving to *jus sanguinis* precedence over *jus soli*, he determines the nationality of children by that of the parents, basing his opinion on the fundamental idea that the Nation is the result of unanimous consent, and that children who do not manifest their will adhere by tacit consent to the country of their father. Finally, his is the credit of stating plainly that the province or the city that has been separated from the State and abandoned is not obliged to receive the new master who may be given it. The germ of all these ideas is to be found in the so-called historical, but purely theoretical, hypothesis of the *Contrat social*. And, without doubt, if Rousseau had written on the Law of Nations as he wrote on municipal public law, he would have developed these ideas; but he did not extend his *Contrat social* from municipal public law to include international public law. While Grotius and Wolff still held to the patrimonial character of the State, Vattel is the first of the writers on the Law of Nations to have a clear and concise, systematic, and coördinated conception of the modern State as a Nation truly free, founded on the adherence of its members, and exempt from tyranny, just as he was among the first, in the realm of municipal public law, to conceive of the modern State, not as a maintainer of order but as a promoter of happiness. This whole section of the work is truly that of a master.

---

[1] E. Cauchy, *Le droit maritime international*, Paris, 1862, II, p. 77.

[2] F. de Martens, *Traité de droit international*, Paris, 1883, Vol. I, pp. 210–212. (Tran. Leo.)

[3] Kleen, *International Law* (in Swedish), V. I, p. 445.

Kant came after, and revived the formula of the non-patrimonial character of the State: "No independent State can be acquired by another through inheritance, exchange, purchase, or gift."[1] That is to say, a State is not (like the soil on which one lives) one's property (*patrimonium*); it is a society of men over which no one has authority and of which no one may dispose, except the society itself. Like the stock of a tree, it has its own roots, and to unite it, like a graft, to another State, is to deprive it of its existence as a moral person and to make of it a thing—a proceeding contrary to the idea of an original contract without which it is impossible to conceive of a right over a people. But Kant drew hence a conclusion that Vattel had not perceived: "For the same reason one State should not hire its troops out to another against an enemy who is not a common enemy, for that would be using its subjects as things which it may use or abuse at will."[2] But if Kant is superior to Vattel on this point, it is only a minor detail.

Vattel preserves, even over Kant, the superiority of having been the first to clear the way for the complete, coördinated construction of the modern State founded on the consent of its citizens, members and subjects together of a sovereignty which receives only from themselves, in virtue of their original adherence, the authority necessary to impose laws upon them for the common good.

---

[1] Kant, *Eléments métaphysiques de la doctrine du droit* (translated by Barni), p. 289.

[2] *Ibid.*, p. 291.

Here Vattel surpasses Grotius without Wolff's help. Elsewhere, he surpasses him with it; for example, when from the equality of men, a proposition unknown to Grotius, he develops—with the assistance of Wolff—the equality of States. J. Westlake has well said:

> "In Wolff, and through him in Vattel, the doctrine of the equality of Nations appears in the following form:[1] Being regarded as persons living in a state of nature, Nations are naturally equal as men are naturally equal; a small Nation is as much a Nation as a large one, just as a dwarf is as much a man as a giant; it is therefore natural or necessary that all Nations have the same rights and the same obligations, as much and no more being allowed to one Nation as to another."[2]

One can easily understand that a citizen of the Republic of Geneva, a burgher of Neuchâtel, would hold this idea, so necessary to the existence of small States, who are themselves so necessary to the existence of humanity, to the development of civilization, above all to the progress of justice, and whose lack of personal ambition forms their chief support in international relations. But it is especially as a philosopher of the Law of Nature, transferring the fundamental ideas of liberty and equality from men to States, that Vattel takes this doctrine, the germ of which is in Wolff, and develops it in a spirit of democratic conviction, which Wolff did not possess.

To Vattel belongs the credit of deducing from the idea of the liberty of Nations, itself derived from the idea of the liberty of man, the conclusion that the Nation, sole mistress of her constitution, may choose such constitution independently of all foreign intervention (Bk. I, §§ 33 *et seq.;* Bk. II, §§ 54, 57) and therefore may not be constrained in the matter of religion (Bk. II, § 59). Kant had not yet set forth in noble words the principle of non-intervention, unknown to Grotius; and yet Vattel, following Wolff, had introduced it into the Law of Nations, where it had until then no place.

Even when he follows in the footsteps of Grotius, Vattel improves upon him. Without being in any sense an originator, but rather an adjuster to the focus, he gives a decided impulse to certain theories. When, at the Congress of Vienna in 1815, the principle of the free passage of international rivers entered into European public law, it was only just to give the credit for it to the jurisconsult who, under the influence of the ideas of Grotius and of Wolff, but deducing the legal consequences thereof, had first set forth the principle that a river should be open for navigation to all States. Thanks to him, the principle applied by Grotius to the freedom of the sea is extended to include the freedom of rivers (Vattel, Bk. II, §§ 132, 133, 134). Likewise the theory of the denial of justice was presented by Vattel in such terms (Bk. II, § 350) that it can no longer be considered without referring to him; the Senate of Hamburg perceived this in the White affair.[1] No one can consider the way in which recourse to arbitration presents itself as an *ultimum subsidium*, in the absence of voluntary redress of a wrong by the foreign State at fault, through the successive stages of its judicial system, without re-reading the enlightening passage of Vattel on this delicate subject (Bk. II, § 350). In determining the rules for the interpretation of treaties, it is to his work that the international judge, following the example set in a long series of arbitral decisions, will always go for information, there given with a sureness and precision elsewhere unequaled.[2] Elsewhere, on the difficult question of diplomatic immunities, which Montesquieu had elucidated in an exposition, superior in form and substance to all others, Vattel, although anticipated, nevertheless deserves the credit of deducing its consequences in such a way that even at the present time he is still the leading authority on the subject.

---

[1] Wolff, *Jus gentium*, §§ 16, 17, 18; Vattel, *Law of Nations*, Intro., §§ 18, 19.

[2] *The Collected Papers of J. Westlake on Public International Law*, edited by L. Oppenheim, Cambridge, 1914, p. 86.

Finally, where, without Wolff's help, Vattel clearly excels Grotius, is in his formulation of the laws of war and of neutrality.

Severe and even barbarous in Grotius, the law of war becomes humanized in the work of Vattel. Between the life-times of the two men manners became less harsh. The European struggle of 1756–1763 was shorter, less severe, also less cruel than that of 1618–1648. Philosopher rather than humanist, Vattel had not, with regard to war, that harshness which recollections of Greek and Latin antiquity imposed upon Grotius, who was led astray by his knowledge and worship of ancient authors. *Adversus hostem æterna auctoritas* said the XII Tables of Rome, following Assyrian, Jewish, or Greek antiquity. In eighteenth century law, the vanquished is without rights before his conqueror; the distinction between combatants and non-combatants does not exist; the property of the enemy is entirely at the mercy of the victor; he can carry it off, ravage, or destroy it. Booty includes everything—personal property or landed estate. Anyone found in enemy territory may be killed. Neither age nor sex protects against the fury of the soldier. Those who do not surrender at discretion may be slain, hostages may be put to death. All these rules of Greek and Latin antiquity, which Grotius's erudition called to his mind and which his respect for the ancients led him to accept, give his work a harshness of character which is often in striking contrast both to the desires expressed by the monk, Honoré Bonnet, and to the fixed principles of the great provost-marshal, Balthazar Ayala.

While the study of the ancients kept Grotius in his state of barbarism, the study of the philosophers led the gentler Vattel to greater civilization.

Convinced that war is contrary to that state of nature which is perfection itself, a state which man has known, and to which, through progress, he must return, Vattel condemns this scourge in itself and finds no excuse whatever for it. He respects the ancients, but respects his conscience more.

---

[1] A. de Lapradelle and Politis, *Recueil des arbitrages internationaux*, II, p. 305 *et seq.*

[2] *Ibid.*, II, pp. 78 *et seq.*

Vattel, after having given the strict law, also suggests mitigations; but many a maxim which to Grotius was but humane advice becomes to the philosopher of Neuchâtel a vital rule of law.[1]

Bynkershoek and Grotius give the Prince the power of arresting and detaining enemy subjects found in his territory. Vattel denies him this right: "They have come into the sovereign's country in reliance upon public faith." To Vattel, as to Grotius and Bynkershoek, there is mutual responsibility between the State and the citizens. Without distinction all subjects of two Nations who are at war are enemies, and consequently all property belonging to such subjects may in principle be confiscated. But Vattel is far from applying these principles with as much severity as his predecessors.

To Grotius the Law of Nations permits the killing of all those who are in enemy territory, not only enemy subjects, but also foreigners and even women and children (*De jure belli*, Bk. III, Ch. XI, § IX). Vattel maintains (Bk. III, § 72): "Since women and children are subjects of the State and members of the Nation, they should be counted as enemies. But that does not mean that they may be treated as men who bear arms or who are capable of doing so."

"In all cases," he says, "where severity is not absolutely necessary mercy should be shown" (Ch. VII, § 141). Even if women, children, and feeble old men are to be counted among the enemy, we have no right to maltreat or otherwise offer violence to them, still less to put them to death (§ 145).

Grotius says that according to the Law of Nations enemies taken during the continuance of hostilities become the slaves of the victor. Vattel observes that even if one has the right to secure one's prisoners, and with that object to imprison or even to bind them, nothing gives the right to treat them harshly, to reduce them to slavery, nor to kill them (§ 150–152). He condemns the use of poisoned weapons. He reprobates even the practice of polluting the water-supply, a point on which he is in advance of Grotius and even of Wolff, who says that the water-supply may be treated so as to render it unfit for consumption, without, however, poisoning it. Although the philosophy of Wolff was, on the subject of the law of war, an advance upon the humaneness of Grotius, the philanthropy of the diplomat of Neuchâtel excels even that of the professor of Halle.

Vattel was the first to state this fundamental principle of modern warfare: "It is indeed necessary to strike down your enemy in order to overcome his designs; but once he is disabled, is there any need that he should inevitably die of his wounds?" (Bk. III, § 156). In the relations between belligerents, the law of war knows no maxim more fundamental, more humane, nor more fruitful; innumerable advances are in embryo in it, from the obligation not to use bullets which expand upon entering the human body, to the duty of succoring the wounded enemy (the principle of the Convention of Geneva); and no one will dispute the fact that the credit of this belongs first of all to Vattel.

---

[1] Sumner Maine in his *International Law* was the first to point out the humanizing influence exercised by Vattel on the law of war. See also on the same subject Bordwell, *Law of war*, Chicago, 1908, p. 47; Hely, *Sur le droit de la guerre de Grotius*, Paris, 1875, p. 180; and Pillet, *Le droit de la guerre*, Vol. I, p. 141.

Vattel had, before any of those writers who are usually quoted, a foreshadowing of the fundamental law which, in modern warfare, governs the relations between the invaders and the peaceful population of the country invaded.

Anticipating the great principle formulated by Rousseau (*Contrat social*, 1762) that war is a relation between State and State, he lays down this fine maxim: "A sovereign makes war upon another sovereign, and not upon unarmed subjects. The conqueror takes possession of the property of the State, and leaves that of individuals untouched. The citizens suffer only indirectly by the war; conquest brings them merely a change of sovereign" (Bk. III, § 200).

Grotius and Bynkershoek permitted the general confiscation of all property of enemy subjects without distinction. Vattel rejects the idea of the confiscation of real property possessed by enemy subjects, and permits only the sequestration of their revenues (§ 76). Although he authorizes each belligerent to confiscate the moneys due his enemy, he adds that the promotion and protection of commerce have led sovereigns to be less rigorous on this point. He still acknowledges that private movable property may be seized, but is so vague in his statement of the subject that in the diplomatic correspondence between the United States and Chile in the case of the *Macedonian* he was quoted by both sides.[1]

On the subject of armistices, Grotius held (Bk. II, Ch. XXI, § 7) that everything was permissible except the carrying on of hostilities. Vattel (Bk. III, §§ 245–246) thought that neither belligerent should do anything, during the armistice, that the enemy could have prevented had hostilities not been interrupted; he should neither continue the operations of a siege, nor repair breaches, nor secure assistance, nor evacuate a perilous position—a doctrine which, as it justly limits the activities of belligerents during the armistice, finds ready acceptance.

More humane than Grotius, he feels that the losses occasioned by war should be justly compensated. Grotius (Bk. II, Ch. XX, § 8) admits in principle a mutual obligation of the citizens to share the losses caused by war, but at the same time recognizes that positive law might forbid any action against the State "to make every man defend more vigorously what belongs to him." Vattel (Bk. III, § 232) is the first to draw a distinction between losses which are the result of deliberate acts of the State, for which an indemnity should be paid, and those which are the result either of an act of the enemy or of accidents incurred in the course of hostilities; he holds that for these no reparation is due, but hastens to add that equitable compensation should be given.

---

[1] A. de Lapradelle and N. Politis, *Recueil des arbitrages internationaux*, II, p. 182 *et seq.*

Have those who say that Vattel lacks originality considered the fundamental principles, the essential formulas which, to the honor of law, make their appearance in his *Law of War?* Between Grotius and Vattel there is a considerable difference. In spite of his efforts to escape from it, Grotius still remains in a state of barbarism. Vattel is the first to temper the law of war with the laws of civilization. True, the influence of the times is the principal reason for the difference between the two works. The Seven Years' War was not conducted on the same principles as the Thirty Years' War. But one can not expect a jurist to be in advance of his age. The essential thing is that he take the ideas in embryo in contemporary customs and practices and, combining them with the ideas then developing in the minds of men and of Nations, reduce them to formulas. Vattel was a witness of that war the humane character of which is described by Joseph de Maistre in his *Soirées de St. Pétersbourg.*[1] The manners and customs of the time are reflected in his work, and to the advance in these is no doubt due the improvement evinced in the moral tone of his treatise. However, it is enough to give it an unparalleled place in the history of the Law of Nations, although Vattel, compared to Grotius, may be far from being that writer's equal. What does the workman matter? The main point is the work. Vattel's is nearer to us than that of Grotius. Being nearer, it is also more humane; being more humane, it is better.

Finally, where Vattel excels his great predecessors is in his formulation of the law of neutrality.

Before him, one may say, this theory was non-existent. Grotius does not even speak of neutrals, but of *medii in bello*, and says very little about them (Ch. XVII). His doctrine of neutrality, which is very brief, is exceedingly weak. Necessity alone can give belligerents power over the property of neutrals; but as this pretext has been abused, he requires this necessity to be extreme. Neutrals must do nothing that may strengthen him whose cause is unjust, nor hamper him who fights for the right. If the justice of the war is in doubt, they must pursue a middle course between the two belligerents; render equal assistance and give free passage to both.

---

[1] "This was during the great century of France . . . Men lived in tents, soldier made war upon soldier." *Soirées de St. Pétersbourg.*

Wolff declares that when a Nation is carrying on a just war, the powers not concerned in the conflict are under a moral obligation, that is to say, an imperfect obligation, of rendering it assistance either by subsidies or by troops. He admits that neutral Nations must allow the troops of belligerent powers free passage through their territory when such passage does no injury.

With a desire for impartiality which none before him had shown to such a degree, Vattel is the first to state this rule—that true impartiality due by the neutral to each belligerent consists not in rendering assistance, but in abstention from assistance. Wherefore he declares that a neutral should refuse his services to both belligerents, since he can not offer them equally to both:

> "Let us consider [says Vattel], what are the elements of this impartiality which a neutral Nation must observe. It relates solely to what may be done in time of war, and includes two things: 1. To give no help, when we are not under obligation to do so, nor voluntarily to furnish either troops, arms, or munitions, or anything that can be directly made use of in the war. I say 'to give no help,' and not 'to give equal help;' for it would be absurd for a State to assist at the same time both enemies, and besides, it would be impossible to assist them both equally, since the same number of troops, the same quantity of arms, munitions, etc., when furnished under different circumstances, would not constitute equal help." (Bk. III, § 104.)

Bynkershoek had a presentiment of this idea, so full of practical consequences (*Quest. Jur. Pub.*, I, 1, 9), but no one had yet laid such stress upon it. Here it is stated with extreme clearness: when it is a question of neutrals' rendering assistance to belligerents, abstention is preferable to action.

But Vattel, whose respect for treaties was absolute, qualified this formula by requiring the observance of international conventions:

> "2. . . . . This does not deprive it of the right to keep in view the best interests of the State when establishing relations of friendship or of commerce." (III, § 104.)

If "a neutral State should give no help to either of the parties," it is "when it is not under obligation to do so" (III, § 105). Moreover, except where treaties exist, he prohibits by the great rule of impartiality through abstention the passage of a belligerent through neutral territory; although, recognizing that the opposite custom exists, he grants him the right when the passage is really innocent, that is to say, without danger; but will that ever be the case? And, besides, who can decide the question without bias?

On the other hand, what Vattel does clearly perceive is that even when the Nation is obliged to abstain from rendering assistance, private commerce remains free: "Neutral Nations are not bound to give up their trade in order to avoid furnishing my enemy with the means of carrying on war" (Bk. III, § 111). This fundamental maxim of the law of neutrality is found in Vattel.

With regard to the law of neutrality on the seas, Vattel is certainly rather brief. But taken all in all, it was his book which, at the end of the eighteenth century, gave definite form to the rights and duties of neutrals.

What Vattel lacks is a legal philosophy. The construction of the Law of Nations that he has attempted is insufficient. Every author who endeavors to formulate a general conception of the Law of Nations comes face to face with the following difficulty: How combine the subjection of States to law—a condition necessary to international harmony—with their sovereignty, which does not recognize any authority, either legislative or judicial, over them? How harmonize the duty of mutual assistance of States and the right that each one has to liberty, that is to say, to independence? Rejecting Wolff's idea of a great republic (*civitas maxima*), instituted by Nature, of which all Nations are members, and substituting therefor the idea of their liberty and absolute independence, Vattel attempts, by means of the fundamental distinction between perfect rights and imperfect rights, to reconcile the sovereignty of States with the existence of an international law that is not exclusively conventional.

He has been justly criticized for the insufficiency of such a conception: what is an imperfect right? A right to request. But what is the use of recognizing that Nations have a right to request, if they have not a right to demand? Baron d'Oleires criticizes Vattel for reducing Nations to the condition of the poor, who may beg alms of the rich, but who have no right to seize them by force; for endangering the harmony and tranquillity of society as a whole by the reproaches and complaints which such a claim arouses; in short, for creating enmity between States. "Since we can not conceive of any external right other than that which can be upheld by force, it is perfectly obvious that the expression *imperfect external right* is an abuse of terms as serious as the consequences of its application would be in the conduct of Nations toward each other."[1]

Does this mean that the distinction drawn between perfect rights and imperfect rights has not in many ways produced happy results?

To deny that such has been the case would be an exaggeration.

Just as in Roman law a purely moral obligation (*naturalis obligatio*) when it has been admitted to exist may give rise to an action, so an international obligation may be sanctioned by an action when it has been recognized by a treaty. Hence when a Nation has laid down the principle of the freedom of rivers, it can no longer make this principle ineffective with respect to third parties; or, again, when it has granted the same treatment to certain Nations, by virtue not of treaties, but of a unilateral declaration, for example by virtue of a law, it may not, without some special reason, such as retorsion or reprisal, exclude any other Nation. In short, whenever a Nation recognizes that it has an international duty toward another Nation, it is impossible to conceive that it may repudiate the declaration thus made, unless it contend that the rule accepted by it has, as a result of the evolution of law, ceased to be in conformity with international justice.

---

[1] Preface of *Questions du droit naturel de M. de Vattel, Avertissement*, pp. 24–25.

But, although the distinction drawn between perfect and imperfect rights must be reckoned with so far as certain of its legal consequences are concerned, it can not be said that it provides a solution for the great problem of reconciling the sovereignty of the State with the subjection of the State to law. Vattel gives here only an apparent reconciliation. He has unduly elaborated, in positive law, the false dogma of the independence of States and has relegated to the background the conception of their interdependence in theoretical law. Inspired by his concern for liberty and equality among men, he soon conceived the idea of liberty and equality among States; but he did not carry this idea to the point of saying that the will of man is the principle of the sovereignty of the State. He did not go so far as to charge the State, in international law, with the duty of securing the international rights of man: the right to commerce, the right to justice, the right to public and moral liberty, and, in so far as is compatible with the imperfection of human nature, the right to life, that is to say, peace. His work, permeated with the spirit of liberty, is not sufficiently imbued with the spirit of solidarity. Hesitatingly he grants the Law of Nations a few sanctions. After having drawn a distinction between a just and an unjust war, he consigns it to the sphere of morality. To prevent acts contrary to law, he recognizes that all States have a right to unite in such a way as to force those States which disregard that law in a manner that militates seriously against the stability of legal relations, to respect the fundamental law of the society of Nations. But, according to him, it is merely a right that the States have, while it should be a strict, legal obligation to them.

Vattel, the philosopher-diplomat, could not escape from considerations of practical politics. However great his love of liberty and of humanity, this faithful servant of princes could not shake the dogma of the sovereignty of States. Writing for courts and for the leaders of Nations, he could only place law beside diplomacy as wise counsel; he could not set it above diplomacy as a strict rule. It would be vain to look in his work for a reflection of the fine passage of Suárez on the solidarity of Nations;[1] but, on the other hand, it would be too much to require in a diplomat of the end of the eighteenth century, even though he were permeated with the spirit of the encyclopædia, the same freedom of speech as in a monk of the sixteenth. Vattel, who does not develop to any great extent the idea of arbitration, will probably have no place as an organizer of the society of the future. It can not be gainsaid, however, that the rules which he laid down at the end of the eighteenth century still remain superior to the actual law observed by all the Powers at the beginning of the twentieth. And when we are tempted to take him to task for the shortcomings of his formulas and the brevity of his solutions, do not events come to pass that directly reply to those who are inclined to find him too timid or over-cautious? For, considering that positive law has not yet been able to bring about the observance of even the most moderate of his principles, is he not still too far in advance of our time for the lovers of Utopia to venture to accuse him of lacking an adequate ideal?

At a time when diplomacy recognized no other rules than caprice or interest, Vattel mapped out its boundaries. At a time when the sovereignty of the State was still confused with the sovereignty of princes, he formulated the rights of the Nation. Before the great events of 1776 and 1789 occurred, he had written an international law, based on the principles of public law which two Revolutions, the American and the French, were to make effective. Although his work is dated 1758, it is in full accord with the American principles of 1776 and the French principles of 1789. It has encountered the same resistance, has undergone the same temporary set-backs, and finally has shared the same success. Vattel's *Law of Nations* is international law based on the principles of 1789—the complement of the *Contrat social* of Rousseau, the projection upon the plane of the Law of Nations of the great principles of legal individualism. That is what makes Vattel's work important, what accounts for his success, characterizes his influence, and, eventually, likewise measures his shortcomings. Grotius had written the international law of absolutism, Vattel has written the international law of political liberty. His book is truly representative. And, since the worth of a book lies rather in the ideas that it expresses or reflects than in the temperamental power of the writer, the work of Vattel was destined to eclipse the work of Grotius, just as the principles of public law at the end of the eighteenth century have eclipsed the political maxims of the seventeenth.

COLUMBIA UNIVERSITY,
New York, December 1914.

---

[1] *De legibus*, lib. VI, Ch. XIX, No. 9.

THE LAW OF NATIONS.

BIBLIOGRAPHY OF THE DIFFERENT EDITIONS.

Le droit des gens, ou principes de la loi naturelle, appliqués à la conduite et aux affaires des des nations et des souverains, par M. de Vattel. A Londres, M.DCC.LVIII. 2 v. 4°. v. 1: xxvi, 541 p.; v. 2: 375 p. (The edition here reproduced.)

——— 3 v. 12°. v. 1: lix, 480 p.; v. 2: (2), 532 p.; v. 3: (2), 510 p.

Le droit des gens, ou principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains, par M. de Vattel, ouvrage qui conduit à développer les véritables intérêts des puissances. A Leyde, aux dépens de la Compagnie, MDCCLVIII. 2 v. 4°. v. 1: 18, 228 p.; v. 2: 14, 162 p.

This edition, like that here reproduced, was printed at Neuchâtel. Part of the edition is dated Leyden, and part, like that here reproduced, is dated London. This edition is mentioned in his *Bibliographie du droit international* (Paris, 1905, No. 1092) by the Marquis de Olivart, in preference to the one reproduced, which appears to be unknown to him. The Leyden edition of 1758 was merely a reprint, or rather a forgery, of the first edition, published at Neuchâtel, Switzerland, but dated London, at the beginning of 1758, in 2 volumes 4°, or 3 volumes 12°.

Idem. 2. édition. Leide, 1758. 3 v. 12°. [Klüber, Droit des gens, 1861.][1]

"According to Klüber (*Le Droit des gens moderne de l'Europe*, 1861, p. 446) there had already appeared a second edition, likewise at Leyden, the same year as the first, in 3 volumes 12°; but, aside from the fact that this edition is mentioned by no one else, it seems rather improbable that so considerable a work could have been printed, especially at that time, twice in the same year." (Pillet, *Les Fondateurs du droit international*, Paris, 1904, p. 483, Note 3.)

Idem. Nouvelle édition augmentée, revue et corrigée. Neuchâtel, De l'impr. de la Société typographique, 1773. 2 v. en 1. 4°. v. 1: vi, 501 p.; v. 2: 328 p.

——— 3 v. 8°.

This edition provoked the following observations on the part of the editor of the 1775 edition (M. de Hoffmanns):

"The Neuchâtel edition was brought out after the death of the author from a copy in which he had made marginal notes. But of all these additions not one has changed the text, which I found to be exactly like the Leyden edition, with this difference, that the Leyden edition is correct, while that of Neuchâtel has been sadly injured by the carelessness of the printer. In reading it, one is tempted to think that he wanted to save himself the expense of correcting, and that he put his forms in press as fast as the type-setters could throw them together. Glance at the bottom of this page and you will see instances that will make you think, as I do, that such an edition should be consigned to the grocer for wrapping-paper."[2]

Idem. Nouvelle édition. Neuchâtel, Société typographique, 1774. 3 v. 12°. [Belgique. Catalogue de la Bibl. du Min. des affair. étrang.]

Idem. Nouvelle édition augmentée, revue et corrigée. Avec quelques remarques de l'éditeur. Amsterdam, chez E. van Harrevelt, 1775. 2 v. en 1. 4°. v. 1: XXVIII, 316 p.; v. 2: 216 p.

Idem. Nouvelle édition, avec quelques remarques tirées en partie des manuscrits de l'éditeur. Bâle, 1777. 3 v. 12°. [Klüber.]

---

[1] Brackets enclosing certain titles indicate that the bibliographer has not personally seen the edition.

Idem. Nouvelle édition, sans ces remarques, mais avec la biographie de l'auteur. Neuchâtel, 1777. 3 v. 8°. [Klüber.]

Idem. Nouvelle édition. Nîmes, Buchet, 1783. 2 v. 4°. [Quérard, France littéraire, 1839.]

Idem. Nouvelle édition, revue, corrigée et augmentée. A Nîmes, chez Buchet, libraire. M.DCC.LXXXXIII. 2 v. 8°. v. 1: xvii–xx, i–xvi, 300 p.; v. 2: (2), 230 p.

Idem. Nouvelle édition, augmentée, revue et corrigée, avec quelques remarques de l'éditeur. A Lyon, Imp. de Mistral, 1802. 2 v. 8°.
——— Lyon, 1802. 3 v. 12°. [Quérard.]

Idem. Nouvelle édition, augmentée, revue et corrigée. Paris, Janet, 1820. xxviii, 864 p. 8°.

Idem. Nouvelle édition, augmentée, revue et corrigée, avec quelques remarques de l'éditeur. Paris, Rey et Gravier; Lyon, Ant. Blache. [Quérard.]

Idem. Nouvelle édition, augmentée, revue et corrigée, avec quelques remarques de l'éditeur; précédée d'un discours sur l'étude du droit de la nature et des gens, par Sir James Mackintosh . . . traduit de l'anglais par M. Paul Royer-Collard . . . suivie d'une bibliographie spéciale du droit de la nature et des gens, extraite des ouvrages de Camus, Klüber, etc. Paris, J.-P. Aillaud, 1830. 2 v. 8°. v. 1: lii, 479 p.; v. 2: 451 p.

Idem. Nouvelle édition revue et corrigée d'après les textes originaux, augmentée de quelques remarques nouvelles, et d'une bibliographie choisie et systématique du droit de la nature et des gens, par M. de Hoffmanns; précédée d'un discours sur l'étude du droit de la nature et des gens, par Sir James Mackintosh . . . (tr. en français par M. Royer-Collard. Paris, J.-P. Aillaud, 1835–38. 3 v. 8°. v. 1: 516 p.; v. 2: 458 p.; v. 3: vii, 587 p.

(V. 3 bears the title: Le droit des gens, ou, Principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains, par Vattel. t. 3. Notes et table générale analytique de l'ouvrage, par M. S. Pinheiro-Ferreira.)

Idem. Edition précédée d'un essai de l'auteur sur le droit naturel pour servir d'introduction à l'étude du droit des gens, illustrée de questions et d'observations, par M. le baron de Chambrier d'Oleires . . . ; avec des annexes nouvelles de M. de Vattel et de M. J.-G. Sulzer, et un compendium bibliographique du droit de la nature et des gens et du droit public moderne, par M. le Comte d'Hauterive. Paris, Rey et Gravier, 1838–39. 2 v. 8°. v. 1: xxxix, 477 p.; v. 2: 622 p.

("Instead of Count d'Hauterive, read M. de Hoffmanns, who purely for reasons of delicacy refrained from using his own name." *Quérard.*)

---

[2] In the Neuchâtel edition—

Vol. I: Life, page II, *Mme.* has been printed instead of *M.* Vattel.
Preface, page xviii, you will find "comme M. Wolff a raison" instead of "comme M. Wolff a raisonné."
Page 230. "Prendre" has been printed for "perdre."
Page 237. "L'empire et le domaine ne sont pas inséparables de la nature." It should read "de leur nature."
Page 266. "Bondin" should be "Bodin."
Page 282. "Le droit de ne pas souffrir l'injustice est parfait, c. à. d. accompagné de celui de force pour le vouloir." It should be "pour le faire valoir."
Page 371. "Il ne peut" for "il peut." Page 415. "Compris" for compromis."

Vol. II: Page 50. After the words, "Alexandre . . . fit présent aux Thessaliens de cent talents," the following words, essential to the example, have been omitted: "que ceux-ci devaient aux Thébains."
Page 160. "Si son vainqueur n'a point quitté l'épée de conquérant pour prendre le sceptre d'un souverain équitablement soumis." To make this intelligible, the following has been restored, after the Leyden edition, "d'un souverain équitable et pacifique; ce peuple n'est pas véritablement soumis."
Page 283. "Les Carthaginois avaient violé le droit des gens envers les ambassadeurs [de Rome: on amena à Scipion quelques ambassadeurs] de ce peuple perfide." The words in brackets are lacking in the Neuchâtel edition.

Finally, the whole sheet marked with the letter X in Vol. I, pp. 161–168, is printed in the wrong order; at least it is in the copy before me, and I should not be at all surprised if such were the case in all the copies of this Neuchâtel edition.

Idem. Nouvelle édition augmentée, revue et corrigée, avec quelques remarques de l'éditeur; précédée d'un discours sur l'étude du droit de la nature et des gens par Sir J. Mackintosh, traduit de l'anglais par P. Royer-Collard; suivie d'une bibliographie spéciale du droit de la nature et des gens, extraite des ouvrages de Camus, Rhiber [!] &c.; de notes et table analytique de l'ouvrage par S. Pinheiro-Ferreira. Bruxelles, 1839. 3 v. 8°. [British Museum Catalogue.]

Idem. Nouvelle édition augmentée de quelques remarques nouvelles et d'une bibliographie choisie du droit des gens, par M. de Hoffmanns, précédée d'un discours par Sir J. Mackintosh, trad. par M. Royer-Collard. Paris, 1853. 2 v. 8°. [Klüber.]

Idem. Nouvelle édition, revue par M. P. Royer-Collard, augmentée des notes de M. Pinheiro-Ferreira. 1856. 3 v. 8°.

Idem. Nouvelle édition. Précédée d'un essai et d'une dissertation (de l'auteur) accompagnée des notes de Pinheiro-Ferreira et du Baron de Chambrier d'Oleires, augmentée du discours sur l'étude du droit de la nature et des gens par Sir James Mackintosh (traduction nouvelle), complétée par l'exposition des doctrines des publicistes contemporains mise au courant des progrès du droit public moderne, et suivie d'un table analytique des matières par M. P. Pradier-Fodéré. Paris, Librairie de Guillaumin et cie., 1863. 3 v. 8°. v. 1: xxxv, 644 p.; v. 2: 501 p.; v. 3: 463 p.

——— 3 v. 12°.

TRANSLATIONS.

ENGLISH.

In England.

The law of nations; or, principles of the law of nature applied to the conduct and affairs of nations and sovereigns, by M. de Vattel, a work tending to display the true interest of powers. Translated from the French. London, Printed for J. Coote, 1759. 2 v. in 1. 4°.

Idem. London, Printed for J. Newbery [etc.] 1759–60. 2 v. in 1. 4°. v. 1: xxxvi, 254 p.; v. 2: xiv, 170 p.

Idem. Dublin, Printed for Luke White, MDCCLXXXVII. lxxiv, 728 p. 8°.

Idem. Dublin, Luke White, 1792. lxxii, 728 p. 8°.

Idem. A new edition, corrected. Translated from the French. London, Printed for G. G. and J. Robinson [etc.] 1793. lvi, 444 [*i. e.*, 454 p.]. 8°.

Pages 439–444 should be 449–454.

Idem. A new edition revised, corrected, and enriched with many valuable notes never before translated into English. London, G. G. & J. Robinson, 1797. (2), 66, 500 p. 8°.

Idem. 4th ed., cor. London, Printed for W. Clarke and sons [etc.] 1811. lxvi, 500 p. 8°.

Idem. 8th ed. London, Clarke, 1812. 8°. [English catalogue.]

Idem. Ed. by J. Chitty. London, Sweet, 1833. 8°.

Idem. A new ed., by Joseph Chitty, esq. London, S. Sweet; [etc., etc.] 1834. lxvi, 500 p. 8°.

In the United States.

The law of nations; or, principles of the law of nature; applied to the conduct and affairs of nations and sovereigns. . . . By M. de Vattel. 1st American ed., cor. and rev. from the latest London ed. . . . Tr. from the French. New York, Printed and sold by Samuel Campbell, 1796. xlviii, [49]-563 p. 12°.

Idem. The law of nations; or, principles of the law of nature applied to the conduct and affairs of nations and sovereigns, a work tending to display the true interest of powers. By M. de Vattel. . . . Tr. from the French. Northampton (Mass.). Printed by Thomas M. Pomroy for S. & E. Butler, 1805. xlviii, 563 p. 8°.

Idem. From the French of Monsieur de Vattel. . . . From the last London corrected edition. Philadelphia, Abraham Small, 1817. lii, 500 p. 8°.

Idem. Tr. from the French. Northampton, Mass., S. Butler, 1820. 560 p. 8°.

Idem. Tr. from the French. Philadelphia, P. H. Nicklin & T. Johnson, 1829. 560 p. 8°.

Idem. 4th American ed., from a new ed., by Joseph Chitty. Philadelphia, P. H. Nicklin and T. Johnson, 1835. lxvi, 500 p. 8°.

Idem. 5th American ed. Chitty's ed. Philadelphia, T. & J. W. Johnson, 1839. lxvi, 500 p. 8°. [Little & Brown's Catalogue of law books.]

Idem. 6th American ed., from a new ed., by Joseph Chitty. Philadelphia, T. & J. W. Johnson, 1844. lxvi, 500 p. 8°.

Idem. 7th American ed., from a new ed., by Joseph Chitty. Philadelphia, T. & J. W. Johnson, 1849. lxvi, 500 p. 8°.

Idem. Philadelphia, T. & J. W. Johnson, 1852. 8°.

Idem. Philadelphia, T. & J. W. Johnson, 1853. 8°.

Idem. From the new ed. by Joseph Chitty . . . with additional notes and references by Edward D. Ingraham. Philadelphia, T. & J. W. Johnson, 1854. lxvi, 656 p. 8°. Reprinted, with the same pagination, in 1855, 1856, 1857, 1859, 1863, 1867, and 1872.

SPANISH.

El derecho de gentes ó principios de la ley natural aplicados á la conducta de las naciones y de los soberanos. Traducido por D. Lucas Miguel Otarena, de la última edición francesa de 1820, corregida y aumentada con notas del autor y de los editores. Madrid, 1822. 3 v.

Idem. Spanish translation by J. B. J. G. "con algunas reflexiones sobre las ideas fundamentales de la obra." Burdeos, 1822. 4 v.

Idem. Traducido en castellano por Lucas Miguel Otarena. París, Casa de Masson y hijo, 1824. 4 v. en 2. 24°.

Idem. Traducción por P. Fernández. Madrid, 1834. 2 v.

Idem. El derecho de gentes, ó principios de la ley natural aplicados á la conducta y negocios de las naciones y de los soberanos por *** con una introducción al estudio del derecho natural y de gentes, por Sir James Mackintosh, y una biblioteca selecta de las mejores obras sobre la materia. Nueva ed., aumentada, revisada y corregida. París, Lecointe, 1836. 4 v. 16°.

Idem. A Spanish translation by Manuel Pascual Hernandez, Madrid, 1820, is noted in Allgemeine deutsche Biographie, v. 39, p. 512.

GERMAN.

Völkerrecht; aus d. Französ. von Johann Philipp Schulin. Nürnberg, Frankfurt und Leipzig, Felssecher, 1760. 3 v. 8°.

ITALIAN.

Il diritto delle genti, tradotto del frances. Milano, 1805. 3 v. [Allgemeine deutsche Biographie, v. 39, p. 512.]

The General Editor acknowledges with deep gratitude the assistance rendered by the Library of Congress in revising the bibliography and in making it more complete by the addition of many titles.—*J. B. S.*

THE LAW OF NATIONS
OR THE PRINCIPLES OF NATURAL LAW

Applied to the Conduct and to the Affairs of Nations and of Sovereigns

By E. de Vattel

TRANSLATION OF THE EDITION OF 1758

By Charles G. Fenwick

PREFACE.

The Law of Nations, great and important a subject as it is, has thus far not received the attention which it merits. The majority of men, indeed, have but vague, superficial, and often even mistaken ideas regarding it. The great body of writers, including even authors of repute, understand by the term Law of Nations merely certain rules and certain customs which are accepted among Nations and have become binding upon them by reason of their mutual consent. Such a view restricts within very narrow limits a law of wide extent and of great importance to the human race, and at the same time degrades its position by misconceiving its true origin.

There is no doubt of the existence of a natural Law of Nations, inasmuch as the Law of Nature is no less binding upon States, where men are united in a political society, than it is upon the individuals themselves. Now an exact knowledge of this law can not be had by a mere understanding of what the Law of Nature prescribes for individual persons. When a law is applied to different subjects it must be applied in a manner suited to the nature of each subject. Hence it follows that the natural Law of Nations is a special science which consists in a just and reasonable application of the Law of Nature to the affairs and the conduct of Nations and of sovereigns. All those treatises, therefore, which confuse the Law of Nations with the ordinary natural law must fail to convey a distinct idea and a thorough knowledge of the sacred Law of Nations.

The Romans often confused the Law of Nations with the Law of Nature, giving the term "Law of Nations" (*jus gentium*) to the natural law, inasmuch as the latter was generally recognized and adopted by all civilized Nations. (*a*) The Emperor Justinian's definitions of natural law, the Law of Nations, and civil law, are well known. "Natural law," he says, "is the law taught by nature to all animals."(*b*) This is a definition of the Law of Nature in its widest extent, and not the natural law peculiar to man which is derived from his rational as well as from his animal nature. "The civil law," continues the Emperor, "is the law which is established by each people for itself and which is peculiar to each State or civil society; whereas that law which is established among all men by natural reason, and which is equally observed by every people, is called the Law of Nations, since it is a law which all Nations follow."(*c*) In the following paragraph the Emperor seems to

---

(*a*) Neque vero hoc solum natura, id est, jure gentium, etc., Cicero de offic., Lib. III, c. 5.

(*b*) Jus naturale est, quod natura omnia animalia docuit. Instit., Lib. I, tit. 2.

(*c*) Quod quisque populus ipse sibi jus constituit, id ipsius proprium civitatis est, vocaturque jus civile, quasi jus proprium ipsius civitatis: quod vero naturalis ratio inter omnes homines constituit, id apud omnes peræque custoditur, vocaturque jus gentium, quasi quo jure omnes gentes utantur. Ibid., § I.

come nearer to the sense which we give to the term to-day. "The Law of Nations," he says, "is common to the whole human race. Nations have been led by the needs of their intercourse to set up for themselves certain rules of law. For wars have broken out and there has resulted a state of captivity and of servitude which is contrary to the natural law; since by the natural law all men from the beginning were born free."(*d*) But his further remark that almost all contracts, whether of purchase and sale, of hire, of partnership, of trust, and numberless others owe their origin to this same Law of Nations—this, I say, shows us that Justinian's idea is merely that, in accordance with the condition and circumstances in which men happened to be, right reason has dictated to them certain rules of justice (*droit*), which, being based upon the very nature of things, have won recognition and acceptance on all sides. But that is nothing else than the natural law in its applicability to all men.

Nevertheless the Romans recognized the existence of a law having force between Nations as such, and to it they refer the right of embassies. They had likewise their *fetial* law, which was nothing more than the Law of Nations in its relation to public treaties and particularly to war. The *fetials* were the interpreters, the guardians, and in a manner the priests of the public good faith.(*e*)

Modern writers generally agree in restricting the term Law of Nations (*Droit des Gens*) to the law which should prevail between Nations or sovereign States. They differ only in the view they take of the origin of this law and of its foundations. The celebrated Grotius understands by the "Law of Nations" a law established by the common consent of Nations, and he thus distinguishes it from the natural law. "When a number of persons at different times and in different places maintain the same principle as true, their common opinion must be attributed to some general cause. Now in the matter before us this cause can only be one or the other of these two, either a just deduction from natural principles or a universal consent. In the former we see the *Law of Nature*, in the latter the *Law of Nations.*"(*f*)

From many passages of his excellent work it can be seen that this great writer had some conception of the true view. But as he was breaking ground, so to speak, in an important subject hitherto much neglected, it is not surprising that with his mind burdened by a large number of subjects

---

(*d*) Jus autem gentium omni humano generi commune est: nam usu exigente et humanis necessitatibus, gentes humanæ jura quædam sibi constituerunt. Bella etenim orta sunt, et captivitates sequutæ, et servitutes, quæ sunt naturali juri contrariæ. Jure enim naturali omnes homines ab initio liberi nascebantur. Ibid., § 2.

(*e*) *Fetiales*, quod fidei publicæ inter populos præerant: nam per hos fiebat, ut justum conciperetur bellum (et inde desitum) et ut fœdere fides pacis constitueretur. Ex his mittebant, antequam conciperetur, qui res repeterent: et per hos etiam nunc fit fœdus. Varro, de Ling. Lat., Lib. IV.

(*f*) De Jure Belli et Pacis, translated by Barbeyrac; Preliminary Discourse, § 41.

and of quotations which formed part of his plan, he failed at times to arrive at those distinct ideas which are so essential to a science. With the conviction that Nations or sovereign powers are subject to the authority of the natural law, obedience to which he so often recommends to them, this learned man perceives that there is at bottom a natural Law of Nations (which he somewhere calls the "internal" Law of Nations); and it may perhaps appear that he differs from us only in his terms. But we have already remarked that in constructing this Law of Nations it is not enough merely to apply to Nations the dictates of the natural law with regard to individuals. Moreover, Grotius, by the very distinction which he draws, and by his application of the term "Law of Nations" merely to those principles established by the consent of Nations, apparently gives us to understand that it is only these latter principles which sovereigns can insist upon being observed, the *internal* law remaining a guide for their consciences. If with his idea that political societies or Nations live together in a mutual interdependence in the state of nature, and that as political bodies they are subject to the Law of Nature, Grotius had considered, in addition, that the law ought to be applied to these new subjects according to their nature, this thoughtful writer would have easily perceived that the natural Law of Nations is a special science; that it gives rise among Nations even to an exterior obligation independent of their will, and that the consent of Nations is the foundation and the source only of that particular division of the Law of Nations which is called the "arbitrary Law of Nations."

Hobbes, whose work, in spite of its paradoxes and its detestable principles, shows us the hand of the master—Hobbes, I repeat, was the first, to my knowledge, to give us a distinct though imperfect idea of the Law of Nations. He divides the natural law into the "natural law of man" and the "natural law of States." The latter, in his view, is what is ordinarily called the "Law of Nations." "The principles," he adds, "of both of these laws are exactly the same; but as States acquire what are in a way the characteristics of persons, the same law which we call natural in speaking of the duties of individuals we call the Law of Nations when we apply it to the entire people of a State or Nation."(*g*) His statement that the Law of Nations is the natural law as applied to States or Nations is sound. But in the course of this work we shall see that he was mistaken in thinking that the natural law did not necessarily undergo any change in being thus

---

(*g*) Rursus (lex) *naturalis* dividi potest in naturalem hominum, quæ sola obtinuit dici *Lex Naturæ*, et naturalem *civitatum*, quæ dici potest Lex Gentium, vulgo autem *Jus Gentium* appellatur. Præcepta utriusque eadem sunt: sed quia civitates semel institutæ induunt proprietates hominum personales, lex quam loquentes de hominum singulorum officio *naturalem* dicimus, applicata totis civitatibus, nationibus, sive gentibus,, vocatur *Jus Gentium*, De Cive, Cap. XIV, § 4. I make use of Barbeyrac's translation of Pufendorf's *Jus Naturæ et Gentium*, Lib. II, Cap. III, § 23.

applied; a belief which led him to conclude that the principles of the natural law and those of the Law of Nations were exactly the same.

Pufendorf declares that this opinion of Hobbes meets with his unqualified approval.(*h*) Hence he did not give the Law of Nations a distinct treatment by itself, but included it in his treatment of the natural law in its proper sense.

Barbeyrac, as translator and commentator of Grotius and Pufendorf, came much nearer to the true conception of the Law of Nations. Although the work is in everyone's hands, I shall reproduce here, for the convenience of the reader, this learned translator's note upon Grotius's *De Jure Belli et Pacis*, Lib. I, Cap. I, § 14, N. 3. "I grant," he says, "that there are laws common to all Nations, or principles which all Nations ought mutually to observe, and those who wish to may very well call them the Law of Nations. But apart from the fact that the consent of Nations is not the foundation of the obligation to observe these laws, and indeed could here have no place whatsoever, the principles and rules of such a law are fundamentally the same as those of the Law of Nature in its proper sense, the only distinction being in the application of those principles. This application will be somewhat different by reason of the different manner in which Nations sometimes settle their common affairs."

The author we have just been quoting saw clearly that the rules and precepts of the natural law can not be applied, pure and simple, to sovereign States, and that they ought necessarily to undergo some change according to the nature of the new subjects to which they are applied. But he does not appear to have perceived the full extent of that idea, since he seems to disapprove of giving a separate treatment to the Law of Nations from that of the natural law governing individuals. He merely praises the method of Buddeus, saying "that this author did well in noting (in his *Elementa Philos. pract.*), after each article of the natural law, the application which could be made of it to Nations in their mutual relations; as far at least as the matter in question would permit or require."(*i*) This was taking a step in the right direction. But more profound thought and wider views were required to conceive the idea of a system of the natural Law of Nations which could act as a law for sovereigns and Nations, and to perceive the usefulness of such a work, and above all to be the first to carry it out.

This honor was reserved for Baron de Wolff. This great philosopher saw that the application of the natural law to entire Nations, or to States, in a manner suited to the nature of the subjects, could only be made with

---

(*h*) Pufendorf, *Jus Naturæ et Gentium*, Lib. II, Cap. III, § 23.

(*i*) Note 2, on Pufendorf's *Jus Naturæ et Gentium*, Lib. II, Cap. III, § 23. I have not been able to procure the work of Buddeus, from which I suspect Barbeyrac drew this idea of the Law of Nations.

precision, clearness, and thoroughness by the aid of certain general principles and leading ideas which should control it. He saw that it was only by means of these principles that it could be clearly shown that the precepts of the natural law with respect to individuals ought, by reason of the character of that very law, to be changed and modified when being applied to States or political societies, and so to form a natural and necessary Law of Nations.(*j*) Hence he concluded that the Law of Nations should be treated as a distinct system, a task which he has successfully performed. But we would prefer to hear Mr. Wolff speak for himself in his preface.

> "Since nations (*k*) [he says] recognize in their mutual relations no other law than that established by nature it would seem superfluous to treat the Law of Nations as something distinct from the natural law. But persons of this opinion have not fully grasped the subject. It is true that Nations can only be considered as so many individual persons living together in a state of nature, and therefore all the duties and the rights which nature prescribes and imposes upon all men, in so far as they are by nature born free and are held together only by the ties of nature, should be applied to States as well. In thus applying them there arises a law and there result obligations, which are derived from that unchanging law founded on man's nature; and to this extent the Law of Nations is certainly connected with the Law of Nature. Hence we call it the *natural* Law of Nations, by reference to its origin; and by reference to its binding force we call it the *necessary* Law of Nations. This law is common to all nations, and that nation which does not act according to it violates the common law of all mankind.
>
> "But as Nations or sovereign States are corporate persons and the subjects of obligations and rights which in virtue of the natural law result from the act of association by which political bodies are formed, the nature and essence of these moral persons will necessarily differ in many respects from the nature and essence of the physical units, or men, who compose them. Hence, since rights and duties must be consistent with the nature of their subjects, in applying to Nations the duties which the natural law imposes upon each individual and the rights it confers in order that he may fulfil those duties, they must necessarily be changed so as to suit the nature of the new subjects. Thus it is seen that the Law of Nations is not the same at all points as the natural law, since the latter controls the actions of individuals. Why, therefore, should it not have a separate treatment as being a law peculiar to Nations."

Under persuasion of the usefulness of such a work I impatiently waited for Mr. Wolff's to appear; and on its appearance I resolved to facilitate for a wider circle of readers a knowledge of the brilliant ideas contained in it. The treatise on the Law of Nations by the philosopher of Halle is connected with

---

(*j*) If it were not more desirable, for the sake of brevity, to avoid repetition and to take advantage of ideas already well formed and established; if, I say, it were not better for these reasons to suppose here a knowledge of the ordinary natural law and to proceed to apply it to sovereign States, instead of speaking of such an application, it would be more exact to say that as the natural law in its proper sense is the Law of Nature for individuals, being founded upon man's nature, so the natural Law of Nations is the Law of Nature for political societies, being founded on the nature of these societies. However, as both methods come to the same thing, I have chosen the briefer one. The natural law has already been sufficiently treated; it is shorter simply to make a logical application of it to Nations.

(*k*) A Nation here means a sovereign State, an independent political society.

the same author's previous works upon philosophy and the natural law. Of these there are some sixteen or seventeen volumes in quarto, and a study of them is necessary to an understanding of the work before us. Besides, it is written after the method and systematic form of treatises on geometry—all constituting obstacles which render the work almost useless to persons whose chief desire and interest is a knowledge of the true principles of the Law of Nations. I thought at first that I would only have to separate this treatise from the whole system, so that it would be independent of any of Mr. Wolff's previous works, and then to make it accessible to cultured people in a more attractive form. I made several efforts to do so. But I soon saw that if I was to reach the circle of readers I had in mind I should have to compose a new work quite different from the one before me. Mr. Wolff's method produced a very dry work and one incomplete in many respects. The subjects treated of are so scattered through the work as to weary the attention; and as the writer had already treated of universal public law in his *Law of Nature* he is frequently satisfied with mere references to it when he speaks in his *Law of Nations* of the duties of a State towards itself.

I therefore limited myself to choosing from Mr. Wolff's work what I found most valuable, especially his definitions and general principles. But I was discriminating in my choice and I adapted to my design the materials I had collected. Those who are familiar with Mr. Wolff's treatise on the natural law and the Law of Nations will see to what extent I have profited by them. Had I wished to indicate my indebtedness at all times, I should have burdened my pages with quotations both useless and wearisome to the reader. It is better to acknowledge here once for all my obligations to that great master. Although those who take the trouble to make a comparison will see how different my work is from his, I confess that I should never have had the courage to enter on so wide a field had not the noted philosopher of Halle gone before me and shown the way.

At times, however, I have ventured to leave my guide and to oppose his views. For example, Mr. Wolff, influenced perhaps by the majority of writers, devotes several articles (*l*) to a consideration of the nature of *patrimonial* kingdoms, without either rejecting or correcting an idea so hurtful to mankind. I do not even acknowledge the term, which I consider at once revolting, untrue, and dangerous in the effects it may produce upon the minds of sovereigns. In this dissent I am encouraged to think that I shall win the approval of every man of judgment and right feeling and every true citizen.

(*l*) In the 8th part of his Law of Nature, and in his Law of Nations.

Mr. Wolff concludes (*Jus Gentium*, § 878) that the Law of Nature permits the use of poisoned weapons in warfare. This conclusion shocks me and I deeply regret finding it in the work of so great a man. Happily for the human race the contrary doctrine can easily be established, and this according to Mr. Wolff's own principles. My remarks on this question will be found in Book III, § 156.

From the outset it will be seen that I differ entirely from Mr. Wolff in the foundation I lay for that division of the Law of Nations which we term *voluntary*. Mr. Wolff deduces it from the idea of a sort of great republic (*Civitas Maxima*) set up by nature herself, of which all the Nations of the world are members. To his mind, the *voluntary* Law of Nations acts as the civil law of this great republic. This does not satisfy me, and I find the fiction of such a republic neither reasonable nor well enough founded to deduce therefrom the rules of a Law of Nations at once universal in character, and necessarily accepted by sovereign States. I recognize no other natural society among Nations than that which nature has set up among men in general. It is essential to every civil society (*Civitas*) that each member should yield certain of his rights to the general body, and that there should be some authority capable of giving commands, prescribing laws, and compelling those who refuse to obey. Such an idea is not to be thought of as between Nations. Each independent State claims to be, and actually is, independent of all the others. Even according to Mr. Wolff's view, they ought to be regarded as so many free individuals who live together in a state of nature, and recognize no other laws than those of nature, or of its divine author. Now although nature has so constituted men that they absolutely require the assistance of their fellow men if they are to live as it befits men to live, and has thus established a general society among them, yet nature can not be said to have imposed upon men the precise obligation of uniting together in civil society; and if all men followed the laws of that good mother subjection to civil society would be needless. It is true that men, seeing that the Laws of Nature were not being voluntarily observed, have had recourse to political association as the one remedy against the degeneracy of the majority, as the one means of protecting the good and restraining the wicked; and the natural law itself approves of such a course. But it is clear that there is by no means the same necessity for a civil society among Nations as among individuals. It can not be said, therefore, that nature recommends it to an equal degree, far less that it prescribes it. Individuals are so constituted that they could accomplish but little by themselves and could scarcely get on without the assistance of civil society and its laws. But as soon as a sufficient number have united under a government, they are able to provide for most of their needs, and they find the help of other political societies not so necessary to them as the State itself is to individuals.

But these individual societies have, it is true, strong motives for mutual communication and intercourse; they have even an obligation to this effect, since without good reason no man may refuse his assistance to another. But this mutual intercourse can be sufficiently regulated by the natural law. States are not like individuals in the conduct of their affairs. Ordinarily their resolutions are not taken nor their public policy determined by the blind rashness or the whim of an individual. Advice is taken and more calmness and deliberation shown; and in delicate or important situations arrangements are made and agreements reached by means of treaties. Moreover, independence is necessary to a State, if it is to fulfill properly its duties towards itself and its citizens and to govern itself in the manner best suited to it. Hence, I repeat, it is enough that Nations conform to the demands made upon them by that natural and world-wide society established among all men.

But Mr. Wolff says that in the intercourse of this society of Nations, the natural law is not always to be followed in all its strictness; changes must be made which can only be deduced from his idea of a sort of great republic of the Nations whose laws, dictated by right reason and founded upon necessity, will determine what changes must be made in the natural and necessary Law of Nations, just as the civil laws of a State determine with respect to individuals the changes to be made in the natural law. I do not perceive the force of this conclusion. I am confident that I shall be able to prove in this work that all the modifications, all the restrictions, in brief, all the changes which must be made in the strictness of the natural law when applied to the affairs of Nations, whence results the *voluntary* Law of Nations—may all be deduced from the natural liberty of Nations, from considerations of their common welfare, from the nature of their mutual intercourse, from their reciprocal duties, and from the distinction between *internal* and *external*, *perfect* and *imperfect* rights. I shall reason much as Mr. Wolff has reasoned with respect to individuals in his treatise on the Law of Nature.

That treatise shows us that the rules which by reason of man's free nature may govern *external* right do not destroy the obligation which the *internal* right imposes upon the conscience of each individual. It is easy to apply this doctrine to Nations, and to teach them by careful distinctions between *internal* and *external* right, that is to say, between the *necessary* Law of Nations and the *voluntary* Law of Nations, not to feel free to do whatever can be done with impunity, when it is contrary to the immutable laws of justice and the voice of conscience.

Now since Nations must mutually recognize these exceptions and modifications in the strict application of the *necessary* law, whether we deduce them from the idea of a great republic of which all the peoples of the world are members, or whether they be drawn from the sources from which I propose to draw, there is no reason why the law which results therefrom should not be called the *voluntary* Law of Nations, in contradistinction to the *necessary* Law of Nations, which is the inner law of conscience. Terms count for little; what is really important is the careful distinction between these two kinds of law, so that we may never confuse what is just and good in itself with what is merely tolerated through necessity.

The *necessary* Law of Nations and the *voluntary* law have therefore both been established by nature, but each in its own way: the former as a sacred law to be respected and obeyed by Nations and sovereigns in all their actions; the latter as a rule of conduct which the common good and welfare oblige them to accept in their mutual intercourse. The *necessary* law is derived immediately from nature; while this common mother of men merely recommends the observance of the *voluntary* Law of Nations in view of the circumstances in which Nations happen to find themselves, and for their common good. This double law, based upon fixed and permanent principles, is susceptible of demonstration, and it will form the principal subject of my work.

There is another species of the Law of Nations called by authors *arbitrary* because its origin is in the will or the consent of Nations. States, like individuals, can acquire rights and contract obligations by express promises, by compacts and by treaties, from which there results a *conventional* Law of Nations peculiar to the contracting parties. Moreover, Nations may bind themselves by their tacit consent; this is the foundation of all those practices which have been introduced among Nations, and which form the *custom* of Nations or the Law of Nations founded upon custom. It is clear that this law can bind only those Nations which by long usage have adopted its principles. It is a special law, as *conventional* law is. Both draw their entire binding force from the natural law, which demands that Nations keep their compacts, whether express or tacit. The natural law should likewise regulate the conduct of States with respect to the treaties they conclude and the customs they adopt. On this subject I must limit myself to stating the general principles and the rules which the natural law furnishes for the conduct of sovereigns. Details of the different treaties and customs of Nations belong rather to history than to a systematic treatise on the Law of Nations.

Such a treatise, as we have remarked before, should consist principally in applying with judgment and discretion the principles of the natural law to the conduct and the affairs of Nations and of sovereigns. The study of the Law of Nations supposes, therefore, a previous knowledge of the Law of Nature; and in fact I shall presume, to a certain extent at least, such knowledge on the part of my readers. However, as recourse to other authorities in proof of a writer's statements is troublesome, I have been careful to state briefly the more important of those principles of the natural law which apply to Nations. But I was not of the opinion that the demonstration of those principles need always be carried back to their primary sources, and I have at times been content to rest them upon certain common truths accepted by every fair-minded reader, without carrying the analysis any further. My object is to persuade, and with that in view to advance as a principle no statement that will not readily be admitted by every reasonable man.

The Law of Nations is the law of sovereigns. It is for them especially and for their ministers that a treatise should be written. All men have a real interest in it, and every citizen of a free country would do well to study its principles. But the mere instruction of individuals, who have no share in the councils of Nations and in the determination of their policy, would be of little advantage. If the leaders of Nations, if all those who have charge of public affairs were to make a serious study of a science which ought to be their law and their guiding compass, what benefit could not be expected from a good treatise on the Law of Nations? The benefits in civil society from a good code of laws are daily felt; but the Law of Nations is as much superior to the civil law in point of importance as the acts of Nations and of sovereigns are more far-reaching in their consequences than those of individual persons.

But we know too well from sad experience how little regard those who are at the head of affairs pay to rights when they conflict with some plan by which they hope to profit. They adopt a line of policy which is often false, because often unjust; and the majority of them think that they have done enough in having mastered that. Nevertheless it can be said of States, what has long been recognized as true of individuals, that the wisest and the safest policy is one that is founded upon justice. Cicero, who was no less a statesman than an orator and a philosopher, is not satisfied with rejecting the popular idea that "a Republic can not be successfully governed without committing certain unjust acts," but he goes so far as to assert the contrary principle as a permanent truth, maintaining that "no one who has not the strictest regard for justice can administer public affairs to advantage."(*m*)

(*m*) Nihil est quod adhuc de republica putem dictum, et quo possim longius progredi, nisi sit confirmatum non modo falsum esse istud, sine injuria non posse, sed hoc verissimum, sine summa justitia rempublicam regi non posse. (Cicero, Fragment. ex lib. de Republica.)

From time to time Providence gives to the world kings and ministers who realize that great truth. Let us hope that the number of these wise rulers will increase some day; in the meantime let us endeavor, each in his own sphere, to hasten the advent of that happy time.

I have at times illustrated principles by examples, principally in the hope of making my work more acceptable to those who have most need to read and profit by it. In this design I have the approval of one of those ministers who, as enlightened friends of the human race, should alone be admitted to the councils of kings. But I have used such examples sparingly. Never seeking to make a vain show of learning, my sole object has been to afford a little relaxation to the reader at times, or to make the doctrine more evident by an example. I have sometimes shown how the practice of Nations has conformed to principle, and whenever the opportunity offered my first endeavor has been to inspire to a love of virtue by showing how beautiful and laudable it is as practised by some truly great men, and even its material advantages, as shown in some striking instance from history. The greater part of my examples have been taken from modern history, as being more interesting in themselves, and at the same time different from those accumulated by Grotius, Pufendorf, and their commentators.

Finally, I have endeavored, both in the examples I have cited and in my conclusions, to avoid giving offense to anyone, being very careful of the respect which is due to Nations and to sovereign powers. But I have made it a still more sacred rule to have regard for the truth and for the interests of the human race. If my principles are attacked by base flatterers of despotism, I shall have on my side men of virtue and courage, true citizens who are friends of the law.

I should prefer to remain entirely silent were I not at liberty to be guided in my writings by the light of my conscience. But there is nothing to restrain my pen, and I could never betray it to flattery. I was born in a country where freedom is the living spirit, the ideal, and the fundamental law. By birth, therefore, I am the friend of all Nations. Under such happy circumstances I am encouraged to be of some service to my fellow men by this work. I am conscious of my deficiencies in both knowledge and ability; I realize that I am undertaking a difficult task: but I shall rest content if those readers whose opinion I value recognize my work as that of an honest man and a good citizen.

TABLE OF THE BOOKS, CHAPTERS, AND PARAGRAPHS.

Volume I.

INTRODUCTION.

Idea and General Principles of the Law of Nations.

Page
1. What is meant by the term Nation or State 3
2. It is a moral person 3
3. Definition of the Law of Nations 3
4. How Nations or States are to be regarded 3
5. To what laws Nations are subject 3
6. The Law of Nations in origin 4
7. Definition of the necessary Law of Nations 4
8. It is not subject to change 4
9. Nations can not change it nor release themselves from its obligations 4
10. The society established by Nature among all men ... 5
11. And among Nations 5
12. The end of this society of Nations 6
13. The general obligation which it imposes 6
14. Explanation of this obligation 6
15. Liberty and independence of Nations; second general law 6
16. Effect of this liberty 6
17. Distinction of obligations and rights as internal and external, perfect and imperfect 7
18. Equality of Nations 7
19. Effect of this equality 7
20. Each is free to act as it pleases, so far as its acts do not affect the perfect rights of others 7
21. Foundation of the voluntary Law of Nations 7
22. Rights of Nations against those who violate the Law of Nations 8
23. Rule of these rights 8
24. Conventional Law of Nations, or Law of Treaties ... 8
25. Customary Law of Nations 8
26. General rule of this law 9
27. Positive Law of Nations 9
28. General rule for the application of the necessary and the voluntary law 9

BOOK I.

A Nation Considered by Itself.

Chapter I.

Nations or Sovereign States.

1. States and sovereignty 11
2. Rights of the body over its members 11
3. Different kinds of government 11
4. What are sovereign States 11
5. States bound by unequal alliances 11
6. Or by treaties of protection 11
7. Tributary States 11
8. Feudatory States 12
9. Two States subject to the same prince 12
10. States forming a confederate republic 12
11. States which have passed under the rule of another .. 12
12. Subjects of this treatise 12

Chapter II.

General Principles of the Duties of a Nation towards Itself.

Page
13. A Nation must act in accord with its nature 13
14. The preservation and perfection of a Nation 13
15. The end of civil society 13
16. A Nation is bound to preserve its existence 13
17. And the lives of its members 14
18. A Nation has a right to whatever is necessary for its self-preservation 14
19. It should avoid whatever might bring about its destruction 14
20. Its right to whatever can assist it in so doing 14
21. A Nation should perfect itself and its condition 14
22. And avoid whatever is contrary to its advancement. 15
23. Rights conferred by this obligation 15
24. Examples 15
25. A Nation ought to know itself 16

Chapter III.

The Constitution of the State, and the Duties and Rights of the Nation in this Respect.

26. The public authority 17
27. What the Constitution of a State is 17
28. A Nation should choose the best one 17
29. Public, fundamental, and civil laws 17
30. The maintenance of the constitution, and obedience to the laws 18
31. Rights of a Nation with respect to its Constitution and its Government 18
32. It can reform its Government 18
33. And change its Constitution 18
34. The legislative power; whether it can change the Constitution 19
35. A Nation should do so only with great caution 19
36. It is judge of all disputes about the government ... 19
37. No foreign power has a right to interfere 19

Chapter IV.

The Sovereign, His Obligations and His Rights.

38. The sovereign 20
39. He is appointed only for the safety and welfare of the society 20
40. His representative character 21
41. He bears the obligations of the Nation and is invested with its rights 21
42. His duty with respect to the preservation and advancement of the Nation 21
43. His rights in this respect 21
44. He ought to know his Nation 21
45. Extent of his power; royal prerogatives 22
46. The prince must respect and maintain the fundamental laws 22
47. Whether he can change the laws which are not fundamental 22
48. He must uphold and observe the existing laws 22
49. In what sense he is subject to the laws 22
50. His person is sacred and inviolable 23

Chapter IV—*Continued.*

Page
51. Nevertheless a Nation may depose a tyrant and refuse obedience to him 23
52. Arbitration between the Prince and his subjects 25
53. Obedience which the subjects owe to the sovereign 25
54. In what cases he may be resisted 25
55. Ministers 27

Chapter V.

Elective States, States with a Succession or Hereditary States, and Those Called Patrimonial.

56. Elective States 28
57. Whether elective kings are real sovereigns 28
58. States with a succession and hereditary States; origin of the right of succession 28
59. Another origin, which amounts to the same thing 28
60. Other sources, which also amount to the same thing 28
61. The Nation can change the order of succession 28
62. Renunciations 29
63. The order of succession should ordinarily be followed. 29
64. Regents 30
65. Indivisibility of sovereignties 30
66. Who has the right to decide disputes regarding the succession to the throne? 30
67. The right of succession ought not to depend upon the judgment of a foreign power 32
68. States called patrimonial 33
69. Every true sovereignty is inalienable 33
70. Duty of a prince who may designate his successor 34
71. Ratification, at least tacit, of the State is necessary 34

Chapter VI.

Principal Objects of a Good Government. First, to Provide for the Needs of the Nation.

72. The aim of civil society determines the duties of the sovereign. First he ought to procure plenty 35
73. And to take care that there be a sufficient number of workmen 35
74. And to prevent the emigration of useful workmen 35
75. Agents who entice workmen away 35
76. Labor and industry should be encouraged 36

Chapter VII.

The Cultivation of the Soil.

77. Usefulness of agriculture 37
78. Proper measures to be taken in this matter; the distribution of lands 37
79. The protection of husbandmen 37
80. Agriculture should be held in esteem 37
81. Natural obligation to cultivate the soil 37
82. Public granaries 38

Chapter VIII.

Commerce.

83. Home trade and foreign trade 39
84. Advantages of home trade 39
85. Advantages of foreign trade 39
86. Obligation to develop home trade 39
87. Obligation to develop foreign trade 39
88. Foundation of the right to trade. Right to purchase. 40
89. Right to sell 40
90. Exclusion of foreign goods 40
91. Nature of the right to buy 40

Chapter VIII—*Continued.*

Page
92. It is for each nation to decide how far it will engage in commerce 41
93. How a perfect right to foreign trade may be acquired. 41
94. Mere permission to trade 41
95. Whether rights of commerce are subject to prescription 41
96. Rights founded upon treaties can not be lost by prescription 42
97. Monopolies, and companies possessing exclusive privileges 43
98. Balance of trade; attention of the Government to this matter 43
99. Import duties 43

Chapter IX.

The Care of Public Roads, and Rights of Toll.

100. Usefulness of highways, canals, etc 44
101. Duties of the Government in this respect 44
102. Its rights in this matter 44
103. Foundation of the right of toll 44
104. Abuse of this right 44

Chapter X.

Money and Exchange.

105. Introduction of money 45
106. Duties of a Nation or prince on the subject of money 45
107. Their rights in this matter 45
108. Wrongs which one Nation may do to another on the subject of coin 46
109. Exchange, and the laws of commerce 46

Chapter XI.

Second Object of a Good Government: To Procure the True Happiness of the Nation.

110. A Nation ought to work for its own happiness 47
111. Education 47
112. Education of youth 47
113. The arts and sciences 48
114. The liberty of philosophical discussion 48
115. Love of virtue and abhorrence of vice ought to be taught 49
116. A Nation will discover therein the policy of those who govern 50
117. The State, or the sovereign authority, ought especially to develop its understanding and its will 50
118. And to direct to the good of the State the knowledge and virtue of its citizens 51
119. Love of country 51
120. In individuals 51
121. In the Nation or State itself, and in the sovereign 51
122. Definition of the term *fatherland* 51
123. How shameful and criminal it is to injure one's country 52
124. The glory of good citizens. Examples 52

Chapter XII.

Piety and Religion.

125. Piety 53
126. It should be enlightened 53
127. Religion, interior and exterior 53
128. Rights of individuals; liberty of conscience 53
129. Public establishment of religion. Duties and rights of a Nation 54

Chapter XII—*Continued.*

Page

130. When there is not yet a religion established by law 54
131. When there is a religion established by law 55
132. Duties and rights of the sovereign in the matter of religion 55
133. In case there is an established religion 55
134. Object of his care, and means which he should employ. 56
135. Toleration 57
136. What the Prince should do when the Nation wishes to change its religion 57
137. Difference of religion does not deprive the Prince of his crown 57
138. The duties and rights of the sovereign reconciled with those of the subjects 57
139. The sovereign should supervise the affairs of religion, and exercise authority over those who teach it 58
140. He ought to prevent any abuse of the established religion 58
141. Authority of the sovereign over the ministers of religion 59
142. Nature of that authority 59
143. Rule to be followed with respect to the clergy 59
144. Summary of the reasons for the rights of the sovereign on the subject of religion, with authorities and examples 60
145. Evil results of the contrary opinion 60
146. The abuses in detail. (1) The power of the popes 61
147. (2) Important offices conferred by a foreign power 62
148. (3) Powerful subjects dependent upon a foreign court 62
149. (4) Celibacy of the priesthood; monasteries 63
150. (5) Exaggerated pretensions of the clergy; preeminence 64
151. (6) Independence and immunities 64
152. (7) Immunity of church property 65
153. (8) Excommunication of public officers 65
154. (9) And of sovereigns themselves 66
155. (10) The clergy extending their control into every field, and disturbing the administration of justice 67
156. (11) Money drawn to Rome 67
157. (12) Laws and practices contrary to the welfare of the State 67

Chapter XIII.

Justice and Public Administration.

158. A Nation ought to make justice prevail 68
159. And to frame good laws 68
160. And to have them observed 68
161. Duties of the Prince in this respect 68
162. How he should administer justice 69
163. He should appoint honest and enlightened judges 69
164. The ordinary courts should decide cases relating to the public revenue 69
165. Supreme courts should be established with the right of final decision 69
166. The Prince should preserve the forms of justice 70
167. The Prince should uphold the authority of the judges and carry out their decisions 70
168. Attributive justice. Distribution of offices and rewards 70
169. Punishment of criminals; foundation of the right to punish 71
170. Criminal laws 71
171. Extent of punishments 71
172. The execution of the laws 72
173. The right of granting pardons 72
174. Public administration 72
175. Duels, or private combats 73
176. Means of putting a stop to this abuse 73

Chapter XIV.

Third Object of a Good Government: To Fortify Itself against Attacks from Without.

Page

177. A Nation should fortify itself against attacks from without 75
178. The strength of a Nation 75
179. Increase in the number of citizens 75
180. Valor 76
181. Other military virtues 76
182. Wealth 77
183. Public revenues and taxes 77
184. A Nation should not increase its strength by unjust means 77
185. National strength is a relative matter 77

Chapter XV.

National Renown.

186. Advantages of renown 78
187. Duty of the Nation in this respect; how true renown is acquired 78
188. Duty of the sovereign 78
189. Duty of the citizens 78
190. Example of the Swiss 79
191. To attack a Nation's honor is to do it an injury 79

Chapter XVI.

Voluntary Submission of a State to a Foreign Power in Order to Obtain Protection.

192. Protection 80
193. Voluntary submission of one Nation to another 80
194. Various forms of submission 80
195. Rights of the citizens when the Nation subjects itself to a foreign power 80
196. These compacts are annulled if protection is not given 81
197. Or if the protected State fail in its obligations 81
198. Or if the protector usurps an authority not granted 81
199. The rights of the protected State may be lost by silence 81

Chapter XVII.

How a City or Province may Separate from the State of which it forms a Part, or Renounce Allegiance to its Sovereign, when it is not Protected.

200. Distinction between the present case and those of the preceding chapter 82
201. Duty of the parts of a State, or the subjects of a prince, when they are in danger 82
202. Their right when they are abandoned 82

Chapter XVIII.

Occupation of Territory by a Nation.

203. The settlement of territory by a Nation 84
204. Rights of a Nation over the territory it occupies 84
205. Acquisition of sovereignty over unoccupied territory 84
206. Another manner of acquiring sovereignty over unoccupied territory 84
207. How a Nation appropriates unoccupied territory 84
208. Difficulty upon this point 85
209. Whether it is lawful to occupy a portion of a territory in which there are only wandering tribes in small numbers 85
210. Colonies 86

CHAPTER XIX.

One's Country, and Various Matters Relating to It.

Page
211. What constitutes one's country 87
212. Citizens and natives 87
213. Residents 87
214. Naturalization 87
215. Children of citizens, born abroad 87
216. Children born at sea 88
217. Children born in the armies of the State, or in the house of its minister at a foreign court 88
218. Domicil 88
219. Vagrants 88
220. Whether a man may expatriate himself 88
221. How one may leave the State for a time 89
222. Public laws vary on this point. They must be obeyed 89
223. Cases in which a citizen has a right to expatriate himself 90
224. Emigrants 90
225. Sources of their right 90
226. If the sovereign violates their right, he does them a wrong 91
227. Suppliants 91
228. Exile and banishment 91
229. Persons exiled or banished have a right to dwell somewhere 92
230. The nature of this right 92
231. Duty of Nations towards them 92
232. A Nation may not punish faults committed outside of its territory 92
233. Except those which affect the safety of all mankind 93

CHAPTER XX.

Public, Common, and Private Property.

234. The *res communes* of the Romans 94
235. National possessions as a whole, and their classification 94
236. Two ways of acquiring public property 94
237. The revenues from public property are naturally at the disposal of the sovereign 94
238. The Nation may grant to him the use and ownership of common property 95
239. Or may confer upon him the ownership and reserve to itself the use of it 95
240. Taxes 95
241. The Nation may reserve to itself the right of imposing them 95
242. The sovereign who has this power 95
243. Duty of the sovereign with respect to taxes 95
244. The right of *eminent domain* belonging to sovereignty 96
245. Sovereignty over public property 96
246. The sovereign may make laws regulating the use of common property 96
247. The alienation of community property 96
248. The use of common property 97
249. Manner in which individuals should use it 97
250. The right of the first comer 97
251. Another application of the same right 97
252. The maintenance and repair of public property 98
253. Duty and rights of the sovereign in this respect 98
254. Private property 98
255. The sovereign may regulate its use 98
256. Inheritances 98

CHAPTER XXI.

The Alienation of Public Property or of the Public Domain, and of a Part of the State.

Page
257. A Nation may alienate its public property 99
258. Duties of a Nation in this respect 99
259. Duties of the sovereign 99
260. He may not alienate public property 99
261. The Nation may give him the right to do so 99
262. Rules on this subject in the case of treaties between Nation and Nation 100
263. The alienation of a part of the State 100
264. Rights of those who are thus cut off from the State 101
265. Whether the Prince has the power to dismember the State 101

CHAPTER XXII.

Rivers, Streams, and Lakes.

266. A river which separates two countries 102
267. The bed of a river which either dries up or changes its course 102
268. The right of alluvion 102
269. Whether alluvion produces any change in the rights over a river 103
270. The result of a change in the course of the river 103
271. Works tending to turn aside the current 103
272. Or, in general, hurtful to the rights of others 104
273. Rules with respect to two conflicting rights 104
274. Lakes 104
275. Lakes which increase in extent 104
276. Accretions formed on the borders of a lake 105
277. The bed of a lake that has dried up 105
278. Jurisdiction over lakes and rivers 105

CHAPTER XXIII.

The Sea.

279. The sea and its uses 106
280. Whether the sea is susceptible of occupation and ownership 106
281. No one has a right to appropriate the use of the high seas 106
282. The Nation which attempts to exclude another does it an injury 106
283. It even does an injury to all Nations 106
284. It may acquire an exclusive right by treaties 107
285. But not by prescription or long usage 107
286. Unless in virtue of an implied agreement 107
287. The sea near the coasts may be subject to ownership 107
288. Another reason for appropriating the sea near the coasts 107
289. How far marginal waters may be appropriated 108
290. Shores and ports 109
291. Bays and straits 109
292. Straits in particular 109
293. Right to wrecks 109
294. A sea inclosed within the territory of a Nation 110
295. The parts of the sea held by a Nation are under its jurisdiction 110

BOOK II.

Nations Considered in Their Relations with Other Nations.

Chapter I.

Common Duties, or Offices of Humanity, Between Nations.

Page
1. Foundation of the common and mutual duties of Nations 113
2. Offices of humanity and their foundation 114
3. General principle of all the mutual duties of Nations . . 114
4. Duties of a Nation with respect to the preservation of others 114
5. It should assist a Nation suffering from famine and other disasters 115
6. And contribute to the advancement of others 115
7. But not by force 115
8. The right to ask for offices of humanity 116
9. The right to decide whether they can be granted 116
10. A Nation may not force another to perform those offices the refusal of which is not an injury 116
11. Mutual love of Nations 116
12. Each should cultivate the friendship of the others 117
13. And improve itself, so as to be of service to the others and set them good example 117
14. And take care of their renown 117
15. Religious differences should not preclude the offices of humanity 117
16. Rule and measure of the offices of humanity 117
17. Special limitation upon the Prince 119
18. No Nation may injure another 119
19. Offenses 120
20. Evil practice of the ancients 120

Chapter II.

Mutual Commerce Between Nations.

21. General obligation of Nations to trade with one another 121
22. They should facilitate commerce 121
23. Freedom of commerce 121
24. Right to trade which belongs to Nations 121
25. Each Nation is judge whether it is in a position to carry on trade 122
26. Necessity of commercial treaties 122
27. General basis of these treaties 122
28. Duty of Nations making these treaties 122
29. Perpetual, temporary, and revocable treaties 122
30. Rights can not be granted to a third party contrary to the terms of the treaty 123
31. How, by treaty with one Nation, commerce with others may be prevented 123
32. A Nation may restrict its rights of commerce in favor of another Nation 123
33. It may obtain a monopoly of a branch of commerce . 123
34. Consuls 124

Chapter III.

The Dignity and Equality of Nations. Titles and Other Marks of Honor.

35. The dignity of Nations or sovereign States 126
36. Their equality 126
37. Precedence 126
38. The form of government does not affect the question . . 126
39. A State should uphold its rank in spite of changes in its form of government 126

Chapter III—*Continued.*

Page
40. Treaties and established custom must be followed . . 127
41. The title and honors given by a Nation to its ruler 127
42. Whether a sovereign may assume what title and honors he pleases 128
43. Rights of other Nations in this respect 128
44. Their duty 128
45. How a sovereign may assure himself of titles and honors 128
46. General custom should be followed 129
47. Mutual respect which sovereigns owe to one another . . 129
48. How a sovereign should maintain his dignity 129

Chapter IV.

The Right of Self-Protection and the Effects of the Sovereignty and Independence of Nations.

49. Right of self-protection 130
50. It gives the right of resistance 130
51. And of obtaining redress 130
52. And of punishing 130
53. Right of all Nations against a wrong-doer 130
54. No Nation has a right to interfere in the government of another 131
55. A sovereign may not make himself judge of the conduct of another 131
56. When it is permitted to interfere in a contest between a sovereign and his people 131
57. Right to resist the interference of foreign powers in the government of a Nation 132
58. The same right with respect to interference in religion . 132
59. No Nation may be constrained on the subject of religion 133
60. Offices of humanity in this matter. Missionaries 133
61. Circumspection which must be used 133
62. What a sovereign may do for his co-religionists in another State 134

Chapter V.

The Observance of Justice Between Nations.

63. Necessity of the observance of justice in human society 135
64. Obligation upon all Nations to promote and observe justice 135
65. Right to resist injustice 135
66. This right is a perfect one 135
67. It gives (1) the right of self-defense 135
68. (2) And that of obtaining justice by force 135
69. Right to punish an unjust Nation 135
70. Right of all Nations against one which openly contemns justice 135

Chapter VI.

The Share a Nation May Have in the Acts of its Citizens.

71. The sovereign should avenge injuries done to the State, and protect the citizens 136
72. He should not permit his subjects to offend other Nations or their subjects 136
73. The acts of its citizens are not to be charged to the Nation 136
74. Unless it approve or ratify them 136
75. Steps to be taken by the injured State 136
76. Duty of the sovereign of the offender 136
77. If he refuses justice, he becomes a party to the deed . 137
78. Another case in which a Nation is held responsible for the acts of its citizens 137

CHAPTER VII.

The Effects of Territorial Domain as Between Nations.

Page
79. General effect of territorial domain 138
80. What is included in the domain of a Nation 138
81. The property of the citizens is the property of the Nation with respect to foreign Nations 138
82. Deduction from this principle 138
83. Connection of national ownership with sovereignty 138
84. Jurisdiction 139
85. Extraterritorial effects of jurisdiction 139
86. Uninhabited and uncultivated places 140
87. Duty of a Nation with regard to them 140
88. The right to appropriate things which belong to no one. 141
89. Rights granted to another Nation 141
90. It is not lawful to drive a Nation from the country which it inhabits 141
91. Nor to extend by violence the boundaries of empire 141
92. Boundary lines must be carefully fixed 141
93. Violation of territory 142
94. Prohibition from entering territory 142
95. Territory occupied at the same time by several Nations 142
96. Territory occupied by an individual 142
97. Independent families living in a country 142
98. When certain places only are settled, or certain rights claimed, in an unoccupied territory 143

CHAPTER VIII.

Rules with Respect to Foreigners.

99. General idea of the proper conduct of a State towards foreigners 144
100. Admittance into the territory 144
101. Foreigners are subject to the laws 144
102. And to the penalties attached to their violation 145
103. Who is to judge disputes between them 145
104. Protection due to foreigners 145
105. Their duties 145
106. To what public burdens they are subject 145
107. Foreigners remain citizens of their own State 146
108. A State has no rights over the person of a foreigner. 146
109. Nor over his property 146
110. Who are the heirs of a foreigner 146
111. Wills of foreigners 146
112. Droit d'Aubaine 147
113. The right of *traite-foraine* 148
114. Realty held by a foreigner 148
115. Marriages of foreigners 148

CHAPTER IX.

The Rights which Remain to all Nations after the Introduction of Territorial Domain and of Private Property.

116. What are the rights of which men can not be deprived 149
117. The right which survives from the original state of community of ownership 149
118. The right remaining to each Nation over what belongs to the others 149
119. The right of necessity 149
120. The right to procure food-supplies by force 149
121. The right to make use of things belonging to another. 150
122. The right to carry off women 150
123. The right of passage 150
124. And of procuring things of which one has need 151
125. The right to dwell in a foreign country 151

CHAPTER IX—*Continued.*

Page
126. Things of which the supply is not exhausted by use. 151
127. The right of innocent use 152
128. Nature of this right in general 152
129. And in cases not open to doubt 152
130. The exercise of this right as between Nations 152

CHAPTER X.

How a Nation Should Use its Right of Territorial Domain so as to Fulfill its Duties Towards Other Nations in the Matter of Innocent Use.

131. General duty of the owner 153
132. Innocent passage 153
133. Pledges may be demanded 153
134. Passage for commercial purposes 154
135. Residence in the State 154
136. How foreigners who ask to settle in a country should be treated 154
137. The right arising from a general permission 155
138. Rights granted as special favors 155
139. A Nation should manifest a friendly attitude 155

CHAPTER XI.

Usucaption and Prescription as Between Nations.

140. Definition of usucaption and prescription 156
141. Usucaption and prescription are based on the natural law 156
142. Foundation of ordinary prescription 157
143. Immemorial prescription 158
144. Where reasons are alleged for silence 158
145. Where signs are given that the owner does not mean to abandon his right 158
146. Prescription founded on acts of the owner 158
147. Usucaption and prescription hold as between Nations 158
148. It is more difficult to base them, as between Nations, upon a presumed abandonment 159
149. Other principles which support prescription 159
150. Effects of the voluntary Law of Nations in this matter 159
151. The law of treaties, or of custom, in this matter 159

CHAPTER XII.

Treaties of Alliance and Other Public Treaties.

152. Definition of a treaty 160
153. Arrangements, agreements, or conventions 160
154. Who can enter into treaties 160
155. Whether a protectorate can enter into treaties 160
156. Treaties entered into by commissioners or plenipotentiaries of sovereigns 161
157. The validity of treaties 161
158. The fact that they work injuriously does not render them void 161
159. Duty of Nations in this matter 161
160. Treaties disastrous to the State are null and void 161
161. Invalidity of treaties made for an unjust or dishonest purpose 162
162. Whether it is allowed to enter into an alliance with those who do not profess the true religion 162
163. Obligation to observe treaties 162
164. The violation of a treaty is an injury 163
165. Treaties can not be entered into, if in conflict with existing ones 163
166. How agreements on the same subject may be made with several Nations 163

CHAPTER XII—*Continued.*

Page
167. The Nation with which the contract was first made is entitled to the preference ... 163
168. No assistance is due an ally if the war is unjust ... 163
169. General division of treaties. Those which relate to things already due by the natural law ... 164
170. Conflict of such treaties with the duties of a Nation to itself ... 164
171. Treaties containing a mere promise to do no injury to another ... 164
172. Treaties dealing with matters not controlled by the natural law. Equal treaties ... 165
173. Obligation to preserve equality in treaties ... 165
174. Distinction between equal treaties and equal alliances ... 166
175. Unequal treaties and unequal alliances ... 166
176. How an alliance with impairment of sovereignty can annul previous treaties ... 168
177. Such alliances should be as far as possible avoided ... 168
178. Mutual duties of Nations with respect to unequal alliances ... 168
179. When the greater obligations are on the side of the more powerful State ... 168
180. How unequal treaties and alliances may be in conformity with the natural law ... 169
181. Inequality imposed as a penalty ... 169
182. Other varieties, spoken of elsewhere ... 169
183. Personal treaties, and real treaties ... 169
184. The insertion in the treaty of the names of the contracting sovereigns does not make it personal ... 170
185. An alliance made by a Republic is a real one ... 170
186. Treaties concluded by kings or other monarchs ... 170
187. Permanent and transitory treaties ... 171
188. Treaties made by a king for himself and successors ... 171
189. Treaties made for the good of the kingdom ... 171
190. What presumption should exist in case of doubt ... 171
191. That the obligations and rights resulting from a real treaty pass to succeeding sovereigns ... 172
192. Treaties executed by an act done once for all ... 172
193. Treaties already carried out in part ... 173
194. A personal alliance expires if one of the contracting parties ceases to reign ... 174
195. Treaties personal by their nature ... 174
196. An alliance made for the defense of the king and of the royal family ... 174
197. How far a real alliance is binding when the allied sovereign is deposed ... 175

CHAPTER XIII.

The Dissolution and Renewal of Treaties.

198. Expiration of alliances made for a definite period ... 176
199. The renewal of treaties ... 176
200. How a treaty is dissolved when violated by one of the contracting parties ... 177
201. The violation of one treaty does not dissolve another ... 177
202. That the violation of one article of a treaty may nullify the whole treaty ... 177
203. A treaty becomes void if one of the contracting parties ceases to exist ... 178
204. Alliances of a State which has passed under the protection of another ... 178
205. Treaties dissolved by mutual consent ... 179

CHAPTER XIV.

Other Public Conventions; Conventions Concluded by Subordinate Officials; in Particular the Agreement which in Latin is called "Sponsio;" Agreements between the Sovereign and Private Individuals.

Page
206. Conventions entered into between sovereigns ... 180
207. Those entered into by subordinate officials ... 180
208. Treaties made by public officials, when not acting under orders nor possessing sufficient powers ... 180
209. The agreement called *sponsio* ... 181
210. The State is not bound by agreements of this kind ... 181
211. Obligations of one who makes them if they are disavowed by the State ... 182
212. Obligations of the sovereign ... 184
213. Private contracts of a sovereign ... 186
214. Contracts made by the sovereign with private individuals in the name of the State ... 186
215. They bind the Nation and succeeding sovereigns ... 186
216. Debts of the sovereign and of the State ... 186
217. Grants made by the sovereign ... 187

CHAPTER XV.

The Faith of Treaties.

218. Things sacred among Nations ... 188
219. Treaties are to be held sacred by Nations ... 188
220. The faith of treaties is to be regarded as a sacred thing ... 188
221. He who violates his treaties violates the Law of Nations ... 188
222. The right which Nations have against one who holds the binding force of treaties in contempt ... 188
223. Violations by the Popes of the Law of Nations ... 189
224. This abuse authorized by princes ... 190
225. Use of oaths in treaties. They do not constitute the obligation of treaties ... 190
226. An oath in confirmation of a treaty does not change its nature ... 190
227. It gives no preference to one treaty over others ... 190
228. It can not give force to an invalid treaty ... 191
229. Affirmations ... 191
230. Differences of religious belief do not affect the binding force of treaties ... 191
231. Precautions to be taken in the drawing up of treaties. 191
232. Subterfuges in treaties ... 191
233 How a clearly false interpretation of a treaty is contrary to good faith ... 191
234. Faith tacitly pledged ... 192

CHAPTER XVI.

Securities Given for the Observance of Treaties.

235. Guaranties ... 193
236. They give no right to the guarantor to intervene in the execution of the treaty unless called upon ... 193
237. Nature of the obligation they impose ... 193
238. A guaranty must not impair the rights of third parties. 194
239. Duration of the guaranty ... 194
240. Treaties in which a third State acts as surety ... 194
241. Pledges, securities, mortgages ... 194
242. Rights of a Nation over property it holds as security. 194
243. When the holder must restore the property ... 195
244. When the holder may appropriate it ... 195
245. Hostages ... 195
246. What rights are possessed over them ... 195
247. Only the liberty of the hostages is given as security. 195

CHAPTER XVI—*Continued.*

Page
248. When hostages should be returned 195
249. Whether they can be retained on any other account .. 196
250. They can be retained because of their own actions .. 196
251. Support of hostages 196
252. A subject may not refuse to become a hostage 197
253. Rank of hostages 197
254. They should not seek to escape 197
255. Whether a hostage who dies should be replaced 197
256. One who takes the place of a hostage 197
257. A hostage succeeding to the crown 197
258. The liability of a hostage terminates with the treaty. 198
259. A violation of the treaty is an injury done to the hostages 198
260. Fate of hostages when he who has given them fails to keep his word 198
261. Rights founded on custom 198

CHAPTER XVII.

The Interpretation of Treaties.

262. Necessity of laying down certain rules of interpretation 199
263. First general principle: it is not permissible to interpret what has no need of interpretation 199
264. Second general principle: if he who could and should have explained himself has not done so, it is to his own loss 199
265. Third general principle: neither of the contracting parties may interpret the contract after his own mind 200
266. Fourth general principle: what is sufficiently expressed is taken as the real intention 200
267. We should be guided rather by the words of the promisor than by those of the promisee 200
268. Fifth general principle: the interpretation must be made according to fixed rules 200
269. The faith of treaties creates an obligation to observe these rules 201
270. General rule of interpretation 201
271. Terms should be given their ordinary meaning 202
272. The interpretation of very old treaties 202
273. Quibbles on words 202
274. Rule on this point 202
275. Mental reservations 203
276. The interpretation of technical terms 203
277. Terms whose meaning admits of degrees 203
278. Certain figurative expressions 203
279. Equivocal expressions 203
280. Rule for these two cases 204
281. It is not necessary to give the same sense to a term wherever it occurs in the deed 204
282. Any interpretation that leads to an absurdity should be rejected 205
283. And one which would render the deed null and void .. 205
284. Obscure expressions to be interpreted by other clearer ones of the same writer 206
285. Interpretation based upon the internal coherence of the document 206
286. Interpretation based upon the connection between the various provisions 207
287. Interpretation based upon the purpose of the document 207
288. When the decision is based upon several motives .. 208
289. What constitutes a sufficient motive for an act of the will 208

CHAPTER XVII—*Continued.*

Page
290. Extensive interpretation based upon the purpose of the document 209
291. Frauds resorted to in the effort to evade laws or promises 209
292. Restrictive interpretation 210
293. Its use in order to avoid falling into what is absurd or unlawful 210
294. Or what is too severe and burdensome 210
295. How it should restrict terms to the meaning suited to the subject-matter 211
296. How a change in the circumstances can create an exception 211
297. Interpretation of a document in unforeseen cases .. 212
298. Motives taken from the fact that a thing is possible, though not actually existent 212
299. Expressions susceptible of both an extended and a restricted sense 212
300. Things favorable, and things objectionable 213
301. Whatever is equally beneficial to both parties is favorable; the contrary is objectionable 213
302. What is beneficial to human society is favorable; the contrary is objectionable 214
303. Terms which impose a penalty are objectionable .. 214
304. Whatever nullifies a treaty is objectionable 214
305. Whatever tends to change the present state of things is objectionable; the contrary is favorable 214
306. Things combining both what is favorable and what is objectionable 215
307. Interpretation of things favorable 215
308. Interpretation of things objectionable 216
309. Examples 217
310. How acts of pure liberality should be interpreted ... 218
311. The conflict of laws or of treaties 218
312. First rule in cases of conflict 218
313. Second rule 219
314. Third rule 219
315. Fourth rule 219
316. Fifth rule 220
317. Sixth rule 220
318. Seventh rule 220
319. Eighth rule 220
320. Ninth rule 221
321. Tenth rule 221
322. General remark upon the manner of observing all the preceding rules 221

CHAPTER XVIII.

The Manner of Settling Disputes Between Nations.

323. General rule on this subject 222
324. Every Nation is obliged to render satisfaction for the just complaints of another 222
325. How far Nations may abandon their rights and their just grievances 222
326. Means recommended by the natural law to Nations for the settlement of their disputes: first, amicable adjustment 223
327. Compromise 223
328. Mediation 223
329. Arbitration 223
330. Conferences and congresses 223
331. Distinction between evident and doubtful cases 224
332. Essential rights and less important rights 225
333. Under what circumstances a Nation may have recourse to force in a doubtful case 226

Chapter XVIII—*Continued.*

Page
334. And even without attempting other means of settlement 226
335. The voluntary Law of Nations on this subject 226
336. Equitable terms should always be offered 227
337. Right of the possessor, in a doubtful case 227
338. How reparation for an injury should be sought 227
339. Retaliation 227
340. Various ways of punishing without having recourse to arms 228
341. Retorsion 228
342. Reprisals 228
343. What is requisite to render reprisals lawful 228
344. Upon what property reprisals are made 229
345. The State should compensate those who suffer by reprisals 229

Chapter XVIII—*Continued.*

Page
346. The sovereign alone can order reprisals to be made . . 229
347. Reprisals may be used against a Nation for the acts of its subjects; and may be used by a Nation in favor of its own injured subjects 229
348. But reprisals may not be used in favor of foreigners . . 230
349. Those who have given cause for reprisals should compensate those who suffer by them 230
350. What may be considered a refusal of justice 230
351. Subjects arrested by way of reprisal 231
352. Right against those who resist reprisals 231
353. Just reprisals do not constitute a proper cause for war 231
354. A sovereign should confine himself to reprisals, and only proceed to war as a last resort 231

Volume II.

BOOK III.

War.

Chapter I.

War; the Various Kinds of War; the Right to Make War.

Page
1. Definition of war 235
2. Public war 235
3. The right to make war 235
4. It belongs only to the sovereign power 235
5. Defensive and offensive war 236

Chapter II.

Instruments of War; the Raising of Troops, etc.; Army Officers or the Subordinate Authorities in the Conduct of War.

6. The instruments of war 237
7. The right to raise troops 237
8. Obligation of citizens or subjects 237
9. The enlistment or raising of troops 237
10. Whether any persons are exempt from bearing arms . . 238
11. Pay and quarters of soldiers 239
12. Hospitals and homes for invalid soldiers 239
13. Mercenary soldiers 239
14. Conditions under which they are to be enlisted 240
15. Recruiting in foreign countries 240
16. Obligations of soldiers 241
17. Military laws 241
18. Military discipline 241
19. Subordinate officers in war 241
20. How far their promises bind the sovereign 242
21. In what cases their promises bind only themselves . . 242
22. A subordinate officer who assumes an authority which does not belong to him 242
23. The acts of subordinate officers are binding upon their inferiors 242

Chapter III.

The Just Causes of War.

24. War should not be entered upon without the most urgent reasons 243
25. Grounds justifying war, and motives for waging it . . 243

Chapter III—*Continued.*

Page
26. What constitutes in general a just ground of war 243
27. What war is unjust 244
28. The object of war 244
29. War should not be undertaken unless the justifying grounds are supported by proper motives 244
30. Proper motives and evil motives 244
31. War where the grounds are just, but the motives evil . . 244
32. Pretexts 245
33. War undertaken solely for gain 245
34. Nations which make war without cause and without apparent motives 245
35. When defensive war is just or unjust 246
36. How it may become just in resistance to an offensive war which originated in a just cause 246
37. Justice of an offensive war in a manifestly good cause. 246
38. And in a doubtful cause 246
39. War can not be just on both sides 247
40. When it must nevertheless be considered legitimate . . 247
41. War undertaken with the object of punishing a Nation. 247
42. Whether the aggrandizement of a neighboring power can authorize a State to make war upon it 248
43. Alone, and of itself, it can not give the right 248
44. How the appearance of danger gives this right 248
45. Another more evident case 250
46. Other means, always allowable, of guarding against a powerful State 250
47. Political balance of power 251
48. Means of maintaining it 251
49. One who upsets the balance of power may be checked or even weakened 251
50. Conduct permissible when a neighboring sovereign makes preparations for war 252

Chapter IV.

The Declaration of War, and War in Due Form.

51. The declaration of war; its necessity 254
52. What it should contain 254
53. It is simple or conditional 254
54. The right to make war ceases upon the offer of just terms 254
55. Formalities attending the declaration 255
56. Further reasons necessitating the publication of the declaration 255

CHAPTER IV—*Continued.*

Page
57. Defensive war needs no declaration 255
58. When the declaration may be omitted in an offensive war 255
59. It may not be omitted by way of retaliation 255
60. Time at which the declaration is to be made 255
61. Duty of the inhabitants when a foreign army enters the country before declaring war 256
62. Commencement of hostilities 256
63. Conduct to be shown towards subjects of the enemy who happen to be in the country at the time of the declaration of war 256
64. Notification of the war; manifestoes 256
65. Dignity and restraint which should be observed in manifestoes 257
66. Characteristics of lawful war in due form 257
67. It must be distinguished from irregular and unlawful war 257
68. Basis of this distinction 258

CHAPTER V.

The Enemy and Enemy Property.

69. Definition of the term "enemy" 259
70. All the subjects of the two States at war are mutual enemies 259
71. And they remain such wherever they are 259
72. Whether women and children are to be counted as enemies 259
73. Enemy property 259
74. It remains such wherever it be found 259
75. Neutral property found with the enemy 259
76. Lands held by foreigners in enemy territory 260
77. Debts owing to the enemy by a third party 260

CHAPTER VI.

The Enemy's Allies; Leagues of War; Auxiliaries; Subsidies.

78. Treaties relative to war 261
79. Defensive and offensive alliances 261
80. Difference between leagues of war and treaties promising assistance 261
81. Auxiliary troops 261
82. Subsidies 261
83. When a Nation may give help to another 262
84. And enter into an alliance for war 262
85. Alliances made with a Nation actually engaged in war . . 262
86. Implied provision in every alliance looking to war . . 262
87. Refusal to assist in an unjust war does not constitute a breach of the alliance 263
88. What constitutes a *casus fœderis* 263
89. It never exists where a war is unjust 263
90. When it exists where the war is defensive 263
91. And where the treaty is one of guaranty 263
92. No help is due when the State is unable to furnish it, or when the safety of the State would be thereby endangered 263
93. Certain other cases. The case where two members of the same alliance go to war 263
94. Refusal of aid due by reason of an alliance 264
95. The enemy's allies 264
96. Those who make common cause with the enemy are his allies 264
97. And those who help him without being under treaty obligation to do so 265
98. Or who are in offensive alliance with him 265
99. How a defensive alliance joins one with the enemy . . 265

CHAPTER VI—*Continued.*

Page
100. Another case 265
101. In what case it does not produce that effect 266
102. Whether war must be declared against the allies of the enemy 266

CHAPTER VII.

Neutrality, and the Passage of Troops through a Neutral Country.

103. Neutral Nations 268
104. Conduct to be observed by a neutral nation 268
105. An ally may furnish the assistance which he owes, and still remain neutral 268
106. The right to remain neutral 268
107. Treaties of neutrality 269
108. Further reason for making these treaties 269
109. Foundation of the rules of neutrality 269
110. How levies of troops may be permitted, money lent, or articles of every kind sold, without a violation of neutrality 270
111. Trade of neutrals with belligerents 270
112. Contraband goods 271
113. Whether such goods may be confiscated 272
114. Search of neutral vessels 272
115. Enemy goods upon a neutral vessel 273
116. Neutral goods upon an enemy vessel 273
117. Trade with a besieged town 273
118. Impartial offices of neutral nations 273
119. Passage of troops through a neutral country 274
120. Right of passage should be asked for 274
121. It may be refused for good reasons 274
122. In what cases a passage may be forced 274
123. The fear of danger may justify a sovereign in refusing passage 275
124. Or in exacting every reasonable security 275
125. Whether the belligerent must always give the security required 275
126. Impartiality which the neutral must observe in granting or refusing passage to the two belligerents 276
127. No complaint can be made of a neutral State which grants passage 276
128. The neutral State may refuse passage from fear of the resentment of the other belligerent 276
129. And in order to prevent its country from becoming the theater of war 276
130. What is included in the grant of a right of passage . . 276
131. Safety of the passage 277
132. No acts of hostility may be committed by the belligerents in a neutral country 277
133. A neutral must not offer a retreat to troops, so as to enable them to attack their enemy anew 277
134. Proper conduct of troops passing through a neutral country 277
135. Passage may be refused when the war is evidently unjust 278

CHAPTER VIII.

The Law of Nations in Time of War; First, What it is Justifiable and What it is Permissible to do to the Person of the Enemy in a Just War.

136. General principle of the rights of a sovereign against his enemy in a just war 279
137. Difference between acts which are justifiable as between enemies, and acts which are merely permissible, or allowed to go unpunished 279

CHAPTER VIII—*Continued.*

Page
138. The right to weaken the enemy by all means not essentially unlawful 280
139. Right over the person of the enemy 280
140. Limits of this right. An enemy who has ceased to resist may not be killed 280
141. A particular case in which quarter may be refused .. 280
142. Retaliation 280
143. Whether the governor of a town may be put to death because of an obstinate defense 281
144. Turncoats and deserters 282
145. Women, children, the aged, and the sick 282
146. Ecclesiastics, men of letters, and others 283
147. Husbandmen, and in general all unarmed people ... 283
148. The right to make prisoners of war 283
149. Prisoners of war may not be put to death 284
150. How prisoners of war should be treated 284
151. Whether prisoners who can not be guarded or fed may be put to death 284
152. Whether prisoners of war may be reduced to slavery. 286
153. The exchange and ransom of prisoners 286
154. The State is bound to procure the release of its subjects 286
155. Whether it is lawful to have an enemy assassinated or poisoned 287
156. Whether poisoned weapons may be used 289
157. Whether springs may be poisoned 289
158. Dispositions which should be maintained towards the enemy 289
159. Consideration for the person of the enemy's King .. 290

CHAPTER IX.

The Law of War with Respect to the Property of the Enemy.

160. Principles of the right of a belligerent over the property of the enemy 291
161. The right to take possession of it 291
162. Property taken from the enemy by way of punishment 291
163. Property held in order to force the enemy to give due satisfaction 291
164. Booty 292
165. Contributions 292
166. Destruction of property 292
167. Devastation by fire and sword 293
168. What property should be spared 293
169. The bombardment of towns 294
170. Demolition of fortresses 294
171. Safeguards 294
172. General rule in limitation of the injury which may be done to the enemy 294
173. Rule of the voluntary Law of Nations on the same subject 295

CHAPTER X.

Faith Between Enemies; the Use of Stratagems and Deceit; the Employment of Spies, and Some Other Practices.

174. Faith should be sacred as between enemies 296
175. What treaties are to be observed between enemies .. 296
176. On what occasions they may be broken 297
177. Lies 297
178. Stratagems and deceit 298
179. Spies 299
180. Seduction of the enemy's subjects 299
181. May the proffered services of a traitor be accepted 300
182. Deceptive information 301

CHAPTER XI.

The Sovereign Who Wages an Unjust War.

Page
183. An unjust war confers no rights 302
184. Guilt of a sovereign who undertakes an unjust war ... 302
185. Obligations he is under 302
186. Difficulty of repairing the evil he has done 302
187. Whether the nation and the soldiery are under any obligations 303

CHAPTER XII.

The Voluntary Law of Nations with Respect to the Effects of Regular War, Independently of the Justice of the Cause.

188. Nations may not enforce against one another the natural law in all its rigor 304
189. Why they should admit the rules of the voluntary Law of Nations 304
190. As regards its effects, regular war must be accounted just on both sides 305
191. Whatever is permitted to one is permitted to the other 305
192. The voluntary law merely confers impunity upon him whose cause is unjust 305

CHAPTER XIII.

Acquisition by War, and Conquest in Particular.

193. How war is a mode of acquisition 307
194. Extent of the right it confers 307
195. Provisions of the voluntary Law of Nations 307
196. Acquisition of movable property 307
197. Acquisition of real property; conquests 308
198. When it may be validly transferred 308
199. Conditions upon which a conquered town is acquired 309
200. Lands of private citizens 309
201. Conquest of the whole State 310
202. To whom the conquered territory belongs 312
203. Whether we should set at liberty a Nation which has been unjustly conquered by our enemy 312

CHAPTER XIV.

The Rule of Postliminium.

204. Definition of the rule of postliminium 313
205. Basis of this rule 313
206. How it operates 313
207. Whether it takes effect among allies 313
208. It does not take effect in the case of neutral Nations. 314
209. What property may be recovered by the rule of postliminium 314
210. Persons whose return the rule of postliminium does not affect 314
211. They benefit by that rule when they are recaptured .. 314
212. Whether the rule extends to property which has been alienated by the enemy 315
213. Whether the rule of postliminium operates in favor of a Nation which has been completely subdued .. 315
214. The rule of postliminium with respect to what is restored by the treaty of peace 316
215. With respect to what is ceded to the enemy 316
216. The rule of postliminium does not apply after treaty of peace 316
217. Why it always applies in the case of prisoners 316
218. They are likewise free if they escape into neutral territory 317
219. How the rights and obligations of prisoners continue. 317

CHAPTER XIV—*Continued.*

Page
220. Will of a prisoner of war........................ 317
221. Marriage.. 317
222. Modifications of the rule of postliminium, introduced by treaty or by custom........................ 317

CHAPTER XV.

The Law of War with Respect to Private Persons.

223. Subjects may not commit acts of hostility without the order of the sovereign........................ 318
224. The order may be general or special............... 318
225. Why such an order is necessary.................. 318
226. Why the Law of Nations has been obliged to adopt this rule.. 318
227. How the general order *to attack* is interpreted....... 318
228. What private persons may do on the authority of the implied command of the sovereign.......... 319
229. Privateering.................................... 319
230. Volunteers...................................... 319
231. What soldiers and subordinate officers may do...... 319
232. Whether the State should indemnify subjects for the losses caused by the war.................. 320

CHAPTER XVI.

Various Conventions Made During the Course of the War.

233. Truces and suspensions of hostilities.............. 322
234. They do not end the war........................ 322
235. Truces are either partial or general............... 322
236. General truces for long periods.................. 322
237. By whom these agreements may be entered into... 322
238. They bind the sovereign......................... 323
239. When the truce comes into force................. 323
240. Publication of the truce......................... 324
241. Acts of subjects in contravention of the truce....... 324
242. Violation of the truce........................... 324
243. Stipulation of a penalty to be attached to a violation of the truce.................................. 324
244. Duration of the truce........................... 324
245. Effects of the truce; what is and is not permitted during it. Rule 1: Each belligerent may do in his own State what he has the right to do in time of peace.. 325
246. Rule 2: Advantage can not be taken of the truce to do what could not be done during continuance of hostilities................................. 325
247. For instance, to continue the works of a siege or to repair the breaches........................... 326
248. Or to bring help to the town..................... 326
249. A special case to which a different rule applies..... 326
250. Retreat of an army during a truce................ 326
251. Rule 3: No action must be taken in disputed territory, but things must be left as they are......... 327
252. Places abandoned or left unguarded by the enemy.. 327
253. Subjects desiring to revolt against their sovereign can not be received during a truce................. 327
254. Much less can they be induced to commit treasonable acts.. 327
255. Subjects or property of the enemy can not be seized during a truce................................ 327
256. The rule of postliminium during a truce........... 327
257. Intercourse between subjects of the belligerents during a truce................................. 327

CHAPTER XVI—*Continued.*

Page
258. Those who are detained by an insurmountable obstacle after the expiration of a truce.......... 328
259. Special conditions affixed to truces............... 328
260. At the expiration of a truce war recommences without the necessity of a new declaration............ 328
261. Capitulations, and those who may make them.... 328
262. Stipulations which may be contained in them...... 328
263. Faithful observance of capitulations, and the advantages thereof.............................. 329
264. Promises made to the enemy by individuals........ 329

CHAPTER XVII.

Safe-conducts and Passports, and Questions Relating to the Ransom of Prisoners of War.

265. Nature of safe-conducts and passports............ 331
266. By what authority they are given................. 331
267. They can not be transferred from one person to another.. 331
268. Extent of the security promised.................. 331
269. How to determine what right is conferred by a safe-conduct... 331
270. Whether it includes baggage and servants......... 332
271. A safe-conduct granted to a father does not include his family..................................... 332
272. Safe-conducts granted in general terms to a person and his retinue.............................. 332
273. Duration of a safe-conduct....................... 332
274. Case of a person unavoidably detained beyond the prescribed time............................... 332
275. A safe-conduct does not expire at the death of the grantor....................................... 332
276. How it may be revoked......................... 332
277. A safe-conduct containing the clause, "for such time as we shall think fit.".......................... 333
278. Conventions concerning the ransom of prisoners.... 333
279. The right to exact a ransom is transferable........ 333
280. How the ransom contract may be annulled......... 333
281. Case of a prisoner dying before payment of ransom.. 333
282. Release of a prisoner on condition of his obtaining the release of another........................ 334
283. Second capture of a prisoner before he has paid his first ransom................................. 334
284. Recapture of a prisoner by his own party before he has been set at liberty........................ 334
285. Whether the personal effects which a prisoner has been able to keep belong to him................ 334
286. Hostage given for release of a prisoner............. 335

CHAPTER XVIII.

Civil War.

287. Foundation of the sovereign's rights against rebellious subjects................................ 336
288. Who are rebels................................. 336
289. Popular tumults, seditions, and insurrections...... 336
290. How the sovereign should suppress them.......... 336
291. He must keep his promises to the rebels........... 337
292. Civil war...................................... 338
293. Civil war gives rise to two independent parties...... 338
294. They should observe the established laws of war.... 338
295. The effects of civil war vary according to circumstances...................................... 339
296. Conduct to be observed by foreign Nations........ 340

BOOK IV.

The Restoration of Peace; and Embassies.

CHAPTER I.

Peace, and the Obligation to Cultivate It.

Page
1. What peace is 343
2. The obligation to cultivate it 343
3. Specific obligation devolving upon the sovereign 343
4. Extent of this obligation 344
5. Disturbers of the peace 344
6. How long war may be kept up 344
7. War terminates in the return of peace 345
8. General effects of the return of peace 345

CHAPTER II.

Treaties of Peace.

9. What a treaty of peace is 346
10. By whom it may be entered into 346
11. Alienations made by a treaty of peace 347
12. How the sovereign may dispose by treaty of what belongs to individuals 348
13. Whether a prince, while prisoner of war, can make a valid treaty of peace 348
14. Whether peace can be concluded with an usurper 349
15. Allies are included in the treaty of peace 349
16. Members of a league must treat each for himself 349
17. Mediation 349
18. Upon what basis peace may be concluded 350
19. General effect of the treaty of peace 350
20. Amnesty 351
21. Things not mentioned in the treaty 351
22. Things not included in the compromise or amnesty 351
23. Former treaties, referred to and confirmed in the new treaty, form part of it 351

CHAPTER III.

Execution of the Treaty of Peace.

24. When the treaty comes into force 352
25. Proclamation of the restoration of peace 352
26. Time of the execution of the treaty 352
27. A valid excuse should be admitted 352
28. The obligation of the promise ceases when the promisee himself prevents fulfillment 353
29. Cessation of contributions 353
30. The fruits of land restored or ceded 353
31. In what condition things are to be restored 353
32. The interpretation of the treaty of peace; it should be against the party who prescribed the terms 354
33. Designation of territory ceded 354
34. The restoration of conquests does not include a people who have voluntarily subjected themselves 354

CHAPTER IV.

The Observance and the Breach of the Treaty of Peace.

35. The treaty of peace binds the nation and succeeding sovereigns 356
36. It should be faithfully observed 356
37. The plea of fear or constraint does not dispense from its observance 356
38. In how many ways a treaty of peace may be violated 357
39. Firstly: By conduct contrary to the nature of treaties of peace in general 357

CHAPTER IV—*Continued.*

Page
40. To take up arms in a new cause is not a breach of the treaty of peace 357
41. A subsequent alliance with an enemy of the other State is not a breach of the treaty 358
42. Why a distinction must be made between a new war and a breach of the treaty 358
43. Justifiable self-defense is not a breach of the treaty 359
44. Breach of treaty by acts committed against allies 359
45. Secondly: A treaty is violated by acts inconsistent with the nature of that particular treaty 359
46. Thirdly: By the violation of some provision of the treaty 359
47. The violation of a single article annuls the whole treaty 359
48. Whether a distinction can be made in this matter between the more and the less important articles 360
49. Penalties attached to the violation of an article 360
50. Deliberate delays 360
51. Insurmountable obstacles 360
52. Acts of subjects in violation of the treaty of peace 361
53. Or of allies 361
54. Rights of the injured party against one who has violated a treaty 361

CHAPTER V.

The Right of Maintaining Embassies, or the Right of Sending and Receiving Public Ministers.

55. It is necessary that nations be able to negotiate and have intercourse with one another 362
56. They do so through the agency of public ministers 362
57. Every sovereign State has the right to send and to receive public ministers 362
58. Neither an unequal alliance, nor a treaty of protection, deprives a State of this right 362
59. The right of Princes and States of the Empire in this matter 363
60. Cities possessing the *droit de bannière* 363
61. Ministers of viceroys 363
62. Ministers sent during an interregnum by the nation itself or by regents 364
63. A sovereign who hinders another in the exercise of the right of embassy 364
64. What is permitted in this respect in time of war 364
65. The minister of a friendly power should be received 364
66. Resident ministers 364
67. Under what circumstances the ministers of the enemy should be admitted 365
68. Whether ministers may be received from and sent to an usurper 365

CHAPTER VI.

The Several Grades of Public Ministers; the Representative Character of Ministers; and the Honors which Are Due Them.

69. Origin of the several grades of public ministers 367
70. The representative character 367
71. Ambassadors 367
72. Envoys 367
73. Residents 368
74. Ministers 368
75. Consuls, agents, deputies, commissioners 368
76. Letters of credence 369
77. Instructions 369
78. The right to send ambassadors 369
79. The honors which are due to ambassadors 370

CHAPTER VII.

The Rights, Privileges, and Immunities of Ambassadors and Other Public Ministers.

Page
80. Respect due to public ministers 371
81. Their person is sacred and inviolable 371
82. Special protection due to them 371
83. When it should begin to be shown 372
84. What is due to ministers in countries through which they pass 372
85. Ambassadors passing through enemy territory 373
86. Diplomatic intercourse between enemies 373
87. Heralds, trumpeters, and drummers 374
88. Ministers, trumpeters, etc., should be respected even in civil war 374
89. They may sometimes be refused a hearing 374
90. All appearance of insult towards them must be avoided 375
91. By whom and to whom they may be sent 375
92. Independence of public ministers 375
93. Conduct to be observed by a foreign minister 377
94. How he may be restrained, (1) with regard to ordinary transgressions 378
95. (2) In the case of offenses committed against the sovereign 378
96. Right to expel an ambassador who is guilty or justly suspected 379
97. Right to repress him by force if he acts as an enemy. 379
98. Case of an ambassador forming dangerous plots and conspiracies 379
99. What action may be taken against him according to the urgency of the case 381
100. Case of an ambassador making an attempt upon the life of the Prince 381
101. Two remarkable cases illustrating the immunities of public ministers 382
102. Whether a sovereign may retaliate upon an ambassador 383
103. Consensus of nations as to the privileges of ambassadors 383
104. The free exercise of religion 384

CHAPTER VII—*Continued.*

Page
105. Whether ambassadors are exempt from the payment of imposts 385
106. Obligation resulting from practice and general custom 385
107. Ministers whose character as such is not publicly known 386
108. Rights of a sovereign when in a foreign country .. 386
109. Deputies of States 387

CHAPTER VIII.

Jurisdiction over Ambassadors in Civil Cases.

110. An ambassador is exempt from the civil jurisdiction of the country where he resides 389
111. When he may subject himself voluntarily to it 390
112. A minister who is a subject of the country to which he is accredited 390
113. The immunity of the minister extends to his property 391
114. The exemption can not be extended to property connected with any trade in which the minister may be engaged 391
115. Nor to real property which he holds in the country .. 392
116. How justice may be obtained against an ambassador. 393

CHAPTER IX.

The Ambassador's House and His Retinue.

117. The ambassador's house 394
118. Right of asylum 394
119. Immunity of an ambassador's carriages 395
120. The ambassador's retinue 396
121. Wife and family of the ambassador 396
122. Secretary of the embassy 396
123. The ambassador's couriers and dispatches 396
124. Authority of an ambassador over his retinue 396
125. When the rights of an ambassador expire 397
126. Cases when new letters of credence are necessary ... 398
127. Conclusion 398

THE LAW OF NATIONS.

BOOK I.

A Nation Considered by Itself.

THE LAW OF NATIONS.

INTRODUCTION.

Idea and General Principles of the Law of Nations.

Nations or States are political bodies, societies of men who have united together and combined their forces, in order to procure their mutual welfare and security.

§ 1. What is meant by the term nation or state.

Such a society has its own affairs and interests; it deliberates and takes resolutions in common, and it thus becomes a moral person having an understanding and a will peculiar to itself, and susceptible at once of obligations and of rights.

§ 2. It is a moral person.

The object of this work is to establish on a firm basis the obligations and the rights of Nations. The *Law of Nations* is *the science of the rights which exist between Nations or States, and of the obligations corresponding to these rights.*

§ 3. Definition of the law of nations.

It will be seen from this treatise how States, as such, ought to regulate their actions. We shall examine the obligations of a Nation towards itself as well as towards other Nations, and in this way we shall determine the rights resulting from those obligations; for since a right is nothing else but the power of doing what is morally possible, that is to say, what is good in itself and conformable to duty, it is clear that right is derived from duty, or passive obligation, from the obligation of acting in this or that manner. A Nation must therefore understand the nature of its obligations, not only to avoid acting contrary to its duty, but also to obtain therefrom a clear knowledge of its rights, of what it can lawfully exact from other Nations.

Since Nations are composed of men who are by nature free and independent, and who before the establishment of civil society lived together in the state of nature, such Nations or sovereign States must be regarded as so many free persons living together in the state of nature.

§ 4. How nations or states are to be regarded.

Proof can be had from works on the *natural law* that liberty and independence belong to man by his very nature, and that they can not be taken from him without his consent. Citizens of a State, having yielded them in part to the sovereign, do not enjoy them to their full and absolute extent. But the whole body of the Nation, the State, so long as it has not voluntarily submitted to other men or other Nations, remains absolutely free and independent.

As men are subject to the laws of nature, and as their union in civil society can not exempt them from the obligation of observing those laws, since in that union they remain none the less men, the whole Nation, whose

§ 5. To what laws nations are subject.

common will is but the outcome of the united wills of the citizens, remains subject to the laws of nature and is bound to respect them in all its undertakings. And since *right* is derived from *obligation*, as we have just remarked, a Nation has the same rights that nature gives to men for the fulfillment of their duties.

§ 6. The law of nations in origin.

We must therefore apply to nations the rules of the natural law to discover what are their obligations and their rights; hence the *Law of Nations* is in its origin merely the *Law of Nature applied to Nations.* Now the just and reasonable application of a rule requires that the application be made in a manner suited to the nature of the subject; but we must not conclude that the Law of Nations is everywhere and at all points the same as the natural law, except for a difference of subjects, so that no other change need be made than to substitute Nations for individuals. A civil society, or a State, is a very different subject from an individual person, and therefore, by virtue of the natural law, very different obligations and rights belong to it in most cases. The same general rule, when applied to two different subjects, can not result in similar principles, nor can a particular rule, however just for one subject, be applicable to a second of a totally different nature. Hence there are many cases in which the natural law does not regulate the relations of States as it would those of individuals. We must know how to apply it conformably to its subjects; and the art of so applying it, with a precision founded upon right reason, constitutes of the Law of Nations a distinct science.

§ 7. Definition of the necessary law of nations.

We use the term *necessary Law of Nations* for that law which results from applying the natural law to Nations. It is *necessary*, because Nations are absolutely bound to observe it. It contains those precepts which the natural law dictates to States, and it is no less binding upon them than it is upon individuals. For States are composed of men, their policies are determined by men, and these men are subject to the natural law under whatever capacity they act. This same law is called by Grotius and his followers the *internal Law of Nations*, inasmuch as it is binding upon the conscience of Nations. Several writers call it the *natural Law of Nations*.

§ 8. It is not subject to change.

Since, therefore, the necessary Law of Nations consists in applying the natural law to States, and since the natural law is not subject to change, being founded on the nature of things and particularly upon the nature of man, it follows that the necessary Law of Nations is not subject to change.

§ 9. Nations can not change it nor release themselves from its obligations.

Since this law is not subject to change and the obligations which it imposes are necessary and indispensable, Nations can not alter it by agreement, nor individually or mutually release themselves from it.

It is by the application of this principle that a distinction can be made between lawful and unlawful treaties or conventions and between customs which are innocent and reasonable and those which are unjust and deserving of condemnation.

Things which are just in themselves and permitted by the necessary Law of Nations may form the subject of an agreement by Nations or may be given sacredness and force through practice and custom. Indifferent affairs may be settled either by treaty, if Nations so please, or by the introduction of some suitable custom or usage. But all treaties and customs contrary to the dictates of the necessary Law of Nations are unlawful. We shall see, however, that they are not always conformable to the *inner* law of conscience, and yet, for reasons to be given in their proper place, such conventions and treaties are often valid by the *external* law. Owing to the freedom and independence of Nations, the conduct of one Nation may be unlawful and censurable according to the laws of conscience, and yet other Nations must put up with it so long as it does not infringe upon their perfect rights. The liberty of a Nation would not remain complete if other Nations presumed to inspect and control its conduct; a presumption which would be contrary to the natural law, which declares every Nation free and independent of all other Nations.

§ 10. The society established by nature among all men.

Such is man's nature that he is not sufficient unto himself and necessarily stands in need of the assistance and intercourse of his fellows, whether to preserve his life or to perfect himself and live as befits a rational animal. Experience shows this clearly enough. We know of men brought up among bears, having neither the use of speech nor of reason, and limited like beasts to the use of the sensitive faculties. We observe, moreover, that nature has denied man the strength and the natural weapons with which it has provided other animals, and has given him instead the use of speech and of reason, or at least the ability to acquire them by intercourse with other men. Language is a means of communication, of mutual assistance, and of perfecting man's reason and knowledge; and, having thus become intelligent, he finds a thousand means of caring for his life and its wants. Moreover, every man realizes that he could not live happily or improve his condition without the help of intercourse with other men. Therefore, since nature has constituted men thus, it is a clear proof that it means them to live together and mutually to aid and assist one another.

From this source we deduce a natural society existing among all men. The general law of this society is that each member should assist the others in all their needs, as far as he can do so without neglecting his duties to himself—a law which all men must obey if they are to live conformably to their nature and to the designs of their common Creator; a law which our own welfare, our happiness, and our best interests should render sacred to each one of us. Such is the general obligation we are under of performing our duties; let us fulfill them with care if we would work wisely for our greatest good.

It is easy to see how happy the world would be if all men were willing to follow the rule we have just laid down. On the other hand, if each man thinks of himself first and foremost, if he does nothing for others, all will be alike miserable. Let us labor for the good of all men; they in turn will labor for ours, and we shall build our happiness upon the firmest foundations.

§ 11. And among nations.

Since the universal society of the human race is an institution of nature itself, that is, a necessary result of man's nature, all men of whatever condition are bound to advance its interests and to fulfill its duties. No convention or special agreement can release them from the obligation. When, therefore, men unite in civil society and form a separate State or Nation they may, indeed, make particular agreements with others of the same State, but their duties towards the rest of the human race remain unchanged; but with this difference, that when men have agreed to act in common, and have given up their rights and submitted their will to the whole body as far as concerns their common good, it devolves thenceforth upon that body, the State, and upon its rulers, to fulfill the duties of humanity towards outsiders in all matters in which individuals are no longer at liberty to act, and it peculiarly rests with the State to fulfill these duties towards other States. We have already seen (§ 5) that men, when united in society, remain subject to the obligations of the Law of Nature. This society may be regarded as a moral person, since it has an understanding, a will, and a power peculiar to itself; and it is therefore obliged to live with other societies or States according to the laws of the natural society of the human race, just as individual men before the establishment of civil society lived according to them; with such exceptions, however, as are due to the difference of the subjects.

§ 12. The end of this society of nations.

The end of the natural society established among men in general is that they should mutually assist one another to advance their own perfection and that of their condition; and Nations, too, since they may be regarded as so many free persons living together in a state of nature, are bound mutually to advance this human society. Hence the end of the great society established by nature among all nations is likewise that of mutual assistance in order to perfect themselves and their condition.

§ 13. The general obligation which it imposes.

The first general law, which is to be found in the very end of the society of Nations, is that each Nation should contribute as far as it can to the happiness and advancement of other Nations.

§ 14. Explanation of this obligation.

But as its duties towards itself clearly prevail over its duties towards others, a Nation owes to itself, as a prime consideration, whatever it can do for its own happiness and advancement. (I say whatever it *can* do, not meaning *physically* only, but *morally* also, what it can do lawfully, justly, and honestly.) When, therefore, a Nation can not contribute to the welfare of another without doing an essential wrong to itself, its obligation ceases in this particular instance, and the Nation is regarded as lying under a disability to perform the duty.

§ 15. Liberty and independence of nations; 2d general law.

Since Nations are free and independent of one another as men are by nature, the second general law of their society is that each Nation should be left to the peaceable enjoyment of that liberty which belongs to it by nature. The natural society of nations can not continue unless the rights which belong to each by nature are respected. No Nation is willing to give up its liberty; it will rather choose to break off all intercourse with those who attempt to encroach upon it.

§ 16. Effect of this liberty.

In consequence of that liberty and independence it follows that it is for each Nation to decide what its conscience demands of it, what it can or can not do; what it thinks well or does not think well to do; and therefore it is for each Nation to consider and determine what duties it can fulfill towards others without failing in its duty towards itself. Hence in all cases in which it belongs to a Nation to judge of the extent of its duty, no other Nation may force it to act one way or another. Any attempt to do so would be an encroachment upon the liberty of Nations. We may not use force against a free person, except in cases where this person is under obligation to us in a definite matter and for a definite reason not depending upon his judgment; briefly, in cases in which we have a perfect right against him.

§ 17. Distinction of obligations and rights as internal and external, perfect and imperfect.

To understand this properly we must note that obligations and the corresponding rights produced by them are distinguished into *internal* and *external*. Obligations are internal in so far as they bind the conscience and are deduced from the rules of our duty; they are external when considered relatively to other men as producing some right on their part. Internal obligations are always the same in nature, though they may vary in degree; external obligations, however, are divided into *perfect* and *imperfect*, and the rights they give rise to are likewise *perfect* and *imperfect*. *Perfect rights* are those which carry with them the right of compelling the fulfillment of the corresponding obligations; *imperfect rights* can not so compel. *Perfect obligations* are those which give rise to the right of enforcing them; *imperfect obligations* give but the right to request.

It will now be easily understood why a right is always imperfect when the corresponding obligation depends upon the judgment of him who owes it; for if he could be constrained in such a case he would cease to have the right of deciding what are his obligations according to the law of conscience. Our obligations to others are always imperfect when the decision as to how we are to act rests with us, as it does in all matters where we ought to be free.

§ 18. Equality of nations. ✓

Since men are by nature equal, and their individual rights and obligations the same, as coming equally from nature, Nations, which are composed of men and may be regarded as so many free persons living together in a state of nature, are by nature equal and hold from nature the same obligations and the same rights. Strength or weakness, in this case, counts for nothing. A dwarf is as much a man as a giant is; a small Republic is no less a sovereign State than the most powerful Kingdom.

§ 19. Effect of this equality.

From this equality it necessarily follows that what is lawful or unlawful for one Nation is equally lawful or unlawful for every other Nation.

§ 20. Each is free to act as it pleases so far as its acts do not affect the perfect rights of others.

A Nation is therefore free to act as it pleases, so far as its acts do not affect the perfect rights of another Nation, and so far as the Nation is under merely *internal* obligations without any *perfect external* obligation. If it abuse its liberty it acts wrongfully; but other Nations can not complain, since they have no right to dictate to it.

§ 21. Foundation of the voluntary law of nations.

Since Nations are free, independent, and equal, and since each has the right to decide in its conscience what it must do to fulfill its duties, the effect of this is to produce, before the world at least, a perfect equality of rights among Nations in the conduct of their affairs and in the pursuit of their policies. The intrinsic justice of their conduct is another matter which it is not for others to pass upon finally; so that what one may do another may do, and they must be regarded in the society of mankind as having equal rights.

When differences arise each Nation in fact claims to have justice on its side, and neither of the interested parties nor other Nations may decide the question. The one who is actually in the wrong sins against its conscience; but as it may possibly be in the right, it can not be accused of violating the laws of the society of Nations.

It must happen, then, on many occasions that Nations put up with certain things although in themselves unjust and worthy of condemnation, because they can not oppose them by force without transgressing the liberty of individual Nations and thus destroying the foundations of their natural society. And since they are bound to advance that society, we rightly presume that they have agreed to the principle just established. The rules resulting from it form what Wolf calls the *voluntary Law of Nations;* and there is no reason why we should not use the same expression, although we have thought it our duty to differ from that learned man as to how the foundation of that law should be established.

§ 22. Rights of nations against those who violate the law of nations.

The laws of the natural society of Nations are so important to the welfare of every State that if the habit should prevail of treading them under foot no Nation could hope to protect its existence or its domestic peace, whatever wise and just and temperate measures it might take. Now all men and all States have a perfect right to whatever is essential to their existence, since this right corresponds to an indispensable obligation. Hence all Nations may put down by force the open violation of the laws of the society which nature has established among them, or any direct attacks upon its welfare.

§ 23. Rule of these rights.

But care must be taken not to extend these rights so as to prejudice the liberty of Nations. They are all free and independent, though they are so far bound to observe the laws of nature that if one violates them the others may restrain it; hence the Nations as a body have no rights over the conduct of a single Nation, further than the natural society finds itself concerned therein. The general and common rights of Nations over the conduct of a sovereign State should be in keeping with the end of the society which exists among them.

✓ **§ 24. Conventional law of nations, or law of treaties.**

The various agreements which Nations may enter into give rise to a new division of the Law of Nations which is called *conventional*, or the law *of treaties*. As it is clear that a treaty binds only the contracting parties *the conventional Law of Nations* is not universal, but restricted in character. All that can be said upon this subject in a treatise on the Law of Nations must be limited to a statement of the general rules which Nations must observe with respect to their treaties. The details of the various agreements between certain Nations, and of the resulting rights and obligations, are questions of fact, to be treated of in historical works.

§ 25. Customary law of nations.

Certain rules and customs, consecrated by long usage and observed by Nations as a sort of law, constitute the *customary Law of Nations*, or *international custom*. This law is founded upon a tacit consent, or rather upon a tacit agreement of the Nations which observe it. Hence it evidently binds only those Nations which have adopted it and is no more universal than the *conventional law*. Hence we must also say of this *customary law* that its details do not come within a systematic treatise on the Law of Nations, and we must limit ourselves to stating the general theory of it, that is to say, the rules to be observed in it, both as regards its effects and its substance. On this latter point these rules will serve to distinguish lawful and innocent customs from unlawful and unjust ones.

§ 26. General rule of this law.

When a custom or usage has become generally established either between all the civilized countries of the world or only between those of a given continent, Europe for example, or those which have more frequent intercourse with one another, if this custom be indifferent in nature, much more so if it be useful and reasonable, it becomes binding upon all those Nations which are regarded as having given their consent to it. They are bound to observe it towards one another so long as they have not expressly declared their unwillingness to follow it any longer. But if there be anything unjust or unlawful in such a custom it is of no force, and indeed every Nation is bound to abandon it, since there can be neither obligation nor authorization to violate the Law of Nature.

§ 27. Positive law of nations.

These three divisions of the Law of Nations, the *voluntary*, the *conventional*, and the *customary* law, form together the *positive Law of Nations*, for they all proceed from the agreement of Nations; the *voluntary* law from their presumed consent; the *conventional* law from their express consent; and the *customary* law from their tacit consent. And since there are no other modes of deducing a law from the agreement of Nations, there are but these three divisions of the positive Law of Nations.

We shall be careful to distinguish them from the *natural* or *necessary* Law of Nations, without, however, treating them separately. But after having established on each point what the necessary law prescribes, we shall then explain how and why these precepts must be modified by the *voluntary* law; or, to put it in another way, we shall show how, by reason of the liberty of nations and the rules of their natural society, the *external* law which they must observe towards one another differs on certain points from the principles of the *internal* law, which, however, are always binding upon the conscience. As for rights introduced by treaties or by custom, we need not fear that anyone will confuse them with the natural Law of Nations. They form that division of the Law of Nations which writers term the *arbitrary* law.

§ 28. General rule for the application of the necessary and the voluntary law.

In order from the start to lay down broad lines for the distinction between the *necessary law* and the *voluntary law* we must note that since the *necessary law* is at all times obligatory upon the conscience, a Nation must never lose sight of it when deliberating upon the course it must pursue to fulfill its duty; but when there is question of what it can demand from other States, it must consult the *voluntary law*, whose rules are devoted to the welfare and advancement of the universal society.

CHAPTER I.

Nations or Sovereign States.

§ 1. States and sovereignty.

A Nation or a State, as we have already said in the introduction, is a political body, a society of men who have united together and combined their forces in order to procure their mutual welfare and security.

From the fact that this group of men forms a society in which they have common interests and must act in concert it is necessary that a public authority be set up, which shall regulate and prescribe the duties of each member with respect to the object of the association. This public authority constitutes the *sovereignty;* and he, or they, in whom it is vested is the *sovereign.*

§ 2. Rights of the body over its members.

We observe that by the act of civil or political association each citizen subjects himself to the authority of the whole body in all that relates to the common good. This authority is therefore an essential characteristic of the political body or State, but its exercise may be intrusted to different hands, as the society may prescribe.

§ 3. Different kinds of government.

If the body of the people reserve to itself the sovereign authority or the right to rule, the government is a popular one, a *democracy;* if it intrust this power to a certain number of citizens, to a Senate, it constitutes itself as an *aristocratic* republic; lastly, if it vest the sovereign authority in one individual, the State becomes a *monarchy.*

These three kinds of government can be variously combined and modified. We shall not enter into details here, for that is the province of *general public law.* It will answer for the purposes of this work to lay down the general principles required to decide questions which may arise between Nations.

§ 4. What are sovereign states?

Every Nation which governs itself, under whatever form, and which does not depend on any other Nation, is a *sovereign State.* Its rights are, in the natural order, the same as those of every other State. Such is the character of the moral persons who live together in a society established by nature and subject to the Law of Nations. To give a Nation the right to a definite position in this great society, it need only be truly sovereign and independent; it must govern itself by its own authority and its own laws.

§ 5. States bound by unequal alliances.

We must therefore rank as sovereign those States which are bound to another more powerful State by an *unequal alliance,* in which, as Aristotle says, the more powerful State is given the greater honor and the weaker State proportionate help.

The terms of these unequal alliances may vary widely; but of whatever character they may be, so long as the inferior ally keeps its sovereignty, or the right of self-government, it must be regarded as an independent State and as subject to the authority of the Law of Nations in its intercourse with other States.

§ 6. Or by treaties of protection.

Consequently a weak State which for greater security puts itself under the protection of a more powerful one, and agrees to perform certain acts in return, without, however, divesting itself of its right of self-government and of its sovereignty, such a State, I repeat, does not cease for that reason to rank among sovereign States, whose only rule of conduct is the Law of Nations.

§ 7. Tributary states.

The position of tributary States presents no greater difficulty; for although the payment of tribute to a foreign power detracts somewhat from the dignity of a State, being an acknowledgment of weakness, it leaves the sovereignty of the State intact. Formerly the payment of tribute was a common practice, weaker States thus paying a price for relief from oppression or for protection without ceasing to be sovereign.

§ 8. Feudatory states.

The Germanic Nations introduced a further custom of exacting homage from a conquered State, or one too weak to resist. At times great States have even given sovereignties as fiefs, and sovereigns have voluntarily become the vassals of another.

When the homage leaves the State in the possession of its internal independence and sovereign authority, and merely carries with it certain duties towards the lord of the fief, or even a mere formal acknowledgment, it does not prevent the State or feudatory prince from being truly sovereign. The King of Naples does homage to the Pope for his Kingdom; he is none the less accounted among the principal sovereigns of Europe.

§ 9. Two states subject to the same prince.

Two sovereign States may likewise be subject to the same prince without one being dependent on the other; and each retains all the rights of a free and sovereign Nation. The King of Prussia is the sovereign Prince of Neufchatel in Switzerland, but this does not unite that principality to his other States; hence the citizens of Neufchatel, by reason of their independence, might assist a foreign power at war with the King of Prussia, provided that the war were not in the interest of their principality.

§ 10. States forming a confederate republic.

Finally, a number of sovereign and independent States may unite to form a perpetual confederation, without individually ceasing to be perfect States. Together they will form a confederate republic. Their joint resolutions will not impair the sovereignty of the individual members, although its exercise may be somewhat restrained by reason of voluntary agreements. The obligation to fulfill agreements one has voluntarily made does not detract from one's liberty and independence.

Of this character were formerly the cities of Greece, as are to-day the United Provinces of the Netherlands and the members of the Swiss Confederation.

§ 11. States which have passed under the rule of another.

But a people which has passed under the rule of another is no longer a State, and does not come directly under the Law of Nations. Of this character were the Nations and the Kingdoms which the Romans subjected to their Empire. Most of those they honored with the name of friends and allies were no longer real States. At home they had their own laws and State officers; but in foreign affairs they were at all points obliged to follow the orders of Rome, and of themselves they dared not make war or enter into an alliance. They could make no treaties with other Nations.

§ 12. Subjects of this treatise.

The Law of Nations is the law of sovereigns; free and independent States are moral persons, whose rights and obligations we are to set forth in this treatise.

CHAPTER II.

General Principles of the Duties of a Nation towards Itself.

§ 13. A nation must act in accord with its nature.

If the rights of a Nation are derived from its obligations (§ 3), they are chiefly derived from those which the Nation owes to itself. We shall likewise see that its duties towards others mainly depend upon, and should be regulated and measured by, its duties towards itself. Hence in treating of the obligations and rights of Nations we shall begin, for the sake of order, by setting forth what each Nation owes to itself.

The general and fundamental rule of duties towards self is that every moral being should act in accord with its nature, *naturæ convenienter vivere*. A Nation is a being with certain essential attributes, with its own individual nature, in accordance with which it can regulate its actions. Hence there are certain acts of a Nation which affect it in its character as a Nation, and which either harmonize or conflict with its nature; so that it is not a matter of indifference whether it perform some of them and omit others. The natural law prescribes certain duties in this respect. In this first book we shall see how a Nation must act if it is to be true to itself. Let us first sketch the general character of this conduct.

§ 14. The preservation and perfection of a nation.

The idea of duty can only be attributed to the living; and a moral being can have obligations towards itself only in view to its perfection and its happiness. *To preserve and perfect one's existence* is the sum of all duties to self.

A Nation is *preserved* if the political association which forms it endures. If this association come to an end the Nation or the State no longer exists, though the individuals composing it still live.

A Nation is *perfected* if it is made capable of obtaining the end of civil society; and a Nation is in a *perfect state* when it wants nothing necessary to arrive at that end. We know in general that the perfection of a thing consists in the perfect accord with which its constituent parts tend towards the same end. If a group of men, united in civil society, all conspire to obtain the end which they propose to themselves in thus uniting, the Nation which they form is a perfect one; and it will be more or less so as their accord is more or less perfect. Likewise the Nation in its external circumstances will be more or less perfect according as they are in harmony with the intrinsic perfection of the Nation.

§ 15. The end of civil society.

The end or aim of civil society is to procure for its citizens the necessities, the comforts, and the pleasures of life, and in general their happiness; to secure to each the peaceful enjoyment of his property and a sure means of obtaining justice; and finally to defend the whole body against all external violence.

§ 16. A nation is bound to preserve its existence.

It is now easy to form a just idea of a perfect State or Nation; all of its acts must concur in obtaining the end we have just pointed out.

When men, by the act of associating together, form a State or Nation, each individual agrees to procure the common good of all, and all together agree to assist each in obtaining the means of providing for his needs and to protect and defend him. It is clear that these reciprocal agreements can only be fulfilled by maintaining the political association. The whole Nation is therefore bound to maintain it; and since its maintenance constitutes the self-preservation of a Nation, it follows that every Nation is bound to preserve its corporate existence.

This obligation, though natural to the individuals whom God has created, is not put upon Nations directly by nature, but by the compact which forms civil society; hence it is not absolute, but conditional; that is to say, it presupposes a human act, the social compact. And since compacts can be broken by the common consent of the parties, if the individuals who compose a Nation should unanimously agree to break the bonds which unite them, they may do so and thereby destroy the State or Nation; but they would without doubt do wrong if they were to take this step without serious and just reasons. Civil societies are approved by the natural law, which proposes them to men as the proper means of providing for their needs and working effectively for their perfection. Moreover, civil society is so useful, and even so necessary, to all the citizens that we may well consider it morally impossible that there should be a unanimous consent to break it up without necessity. What citizens may or should do, or what the majority of them may determine upon in certain cases of necessity or urgent need, these are questions to be treated later in their own place; they can not be definitely settled without the aid of some principles we have not yet established. It is enough for the present to have proved in general that so long as the political society exists the whole Nation must exert itself to maintain it.

§ 17. And the lives of its members.

If a Nation is bound to preserve its existence it is not less bound to preserve carefully the lives of its members. It owes this duty to itself; for the loss of any one of its members would weaken it and in so far attack its corporate existence. It owes the same duty to its individual members by reason of the very act of association by which they united for their mutual defense and welfare. No one may be deprived of the benefits of that union so long as he fulfills his part of the agreement.

The body of a Nation, therefore, may not abandon a province, a town, or even an individual belonging to it, unless necessity should constrain it to do so, or urgent reasons of public safety make the act lawful.

§ 18. A nation has a right to whatever is necessary for its self-preservation.

The right of self-preservation carries with it the right to whatever is necessary for that purpose, for the natural law gives us the right to all those things without which we can not satisfy our obligations; otherwise it would oblige us to do what is impossible, or rather it would contradict itself, by prescribing a duty and at the same time refusing us the sole means of fulfilling it. However, it is clear that these means must not be unjust in themselves, or such as the natural law absolutely prohibits. As the use of such means could never be allowed, a general obligation, which could be satisfied on a given occasion in no other way, would be regarded as impossible of fulfillment, and consequently void.

§ 19. It should avoid whatever might bring about its destruction.

It clearly follows from what has been said that a Nation should avoid carefully and as far as possible whatever might bring about its destruction, or that of the State, for the two are identical.

§ 20. Its right to whatever can assist it in so doing.

A Nation or State has the right to whatever can assist it in warding off a threatening danger, or in keeping at a distance things that might bring about its ruin. The same reasons hold good here as for the right to whatever is necessary for self-preservation.

§ 21. A nation should perfect itself and its condition.

The second general duty of a Nation towards itself is to labor for its own perfection and for the improvement of the circumstances in which it is placed, for by this double perfection it becomes capable of attaining the object of civil society. To unite in society, and yet not to work for the ends of that union, would be absurd.

In this matter the entire body of the Nation and each individual lie under a twofold obligation—one proceeding immediately from nature and the other resulting from their reciprocal agreements. Nature obliges every man to work for his own perfection, and in so doing he works for that of civil society, which can not but be prosperous if composed only of good citizens; and as man finds in a well-ordered society the greatest help to the fulfillment of the task imposed upon him by nature of becoming better, and therefore happier, he is unquestionably bound to do all in his power to make that society perfect.

The citizens who form a political society naturally agree to advance the common good, and to procure as far as possible the welfare of each member. Since, then, the perfection of a State is its ability to secure equally the happiness of the whole body and of its members, to work for this perfection is the chief duty a citizen has agreed to perform. It is above all the duty of the entire body in its common policy, and in all its actions as a body.

§ 22. And avoid whatever is contrary to its advancement.

A Nation ought therefore to guard against and avoid carefully whatever can hurt its internal perfection and external advancement, or retard the progress of either.

§ 23. Rights conferred by this obligation.

Moreover, as in the matter of self-preservation (§ 18), we infer that a Nation has a right to all those things without which it can not perfect itself and its external circumstances nor guard against and ward off whatever is contrary to this two-fold development.

§ 24. Examples.

On this subject the English have given us a noteworthy example. This great Nation has distinguished itself brilliantly by its devotion to whatever can increase the welfare of the State. Its praiseworthy constitution enables every citizen to contribute to this great end and diffuses on all sides a truly patriotic spirit, which is zealously intent upon the public good. Private citizens can be seen undertaking for the honor and welfare of the Nation works of considerable importance; and whereas a bad ruler would find his hands tied in that country, a wise and prudent King will be greatly assisted in successfully carrying out his excellent plans. The lords and representatives of the people form a bond of confidence between the King and the Nation and by co-operating with him in all that concerns the public good they relieve him in part of the burden of government, they strengthen his power, and obtain for him an obedience all the more perfect because it is voluntary. Every good citizen realizes that the power of the State results from the welfare of all, and not from that of an individual. Happy constitution, which was not obtained all at once, which cost, it is true, rivers of blood, but has not been bought at too dear a price. May the pest of luxury, so destructive of manly and patriotic virtue, that source of corruption so fatal to liberty, never overthrow a monument which is an honor to the human race, and which can teach kings how glorious it is to rule a free people.

There is another Nation renowned for its bravery and its victories. Its numerous and valiant nobility, its wide and fertile domains, might give it a place of honor throughout all Europe; it has it in its power to become prosperous in a short time. But its constitution stands in the way, and owing to its attachment to that constitution, there is no hope of seeing the proper amendments made to it. It is useless for a magnanimous king, whose virtue puts him above ambition and injustice, to conceive the most salutary plans for the good of the people; it is useless for him to win approval for his plans from the wisest men and the majority of the Nation; a single obstinate deputy, or one bribed by a foreign State, can put a stop to everything, and prevent the passage of the wisest and most necessary measures. Through excessive jealousy of its liberty this Nation has taken precautions which without doubt put it out of the power of the King to make any attack upon the liberty of the people. But is it not clear that these precautions go beyond the mark, that they tie the hands of the wisest and most just Prince, and deprive him of the means of securing that very liberty against the attacks of foreign powers, and of rendering the Nation prosperous and happy? Is it not clear that the Nation has made itself incapable of acting, and that its councils are at the mercy of the caprice or treachery of a single member?

§ 25. A nation ought to know itself.

Finally, in concluding this chapter, let us remark that a Nation must know itself. Without such a knowledge it can not successfully work for its own advancement. It must have a correct idea of its condition, in order that it may take measures suited to its needs; it must know what progress it has already made and what remains to be made, what are the good and what the weak parts of its system, in order that the former may be retained and the latter corrected. Without this knowledge a Nation is governing itself at random; it often passes the most ill-advised measures; it fancies it is acting prudently in imitating the policy of a confessedly wise people, and does not realize that regulations or practices beneficial to one Nation are often hurtful to another. Every business ought to be conducted according to its nature. Nations can not be well governed without taking into account their character; and for this purpose it must be known what that character is.

CHAPTER III.

The Constitution of the State, and the Duties and Rights of the Nation in this Respect.

§ 26. **The public authority.** We were unable to avoid anticipating in the first chapter something of the subject-matter of this one. It has been seen already that every political society must necessarily establish a public authority, which regulates common affairs, prescribes the conduct of each in view of the public good, and possesses the means of compelling obedience. This authority belongs essentially to the whole body of the society; but it can be exercised in many ways, and it is for each society to determine and adopt the way which suits it best.

§ 27. **What the constitution of a state is.** The fundamental law which determines the manner in which the public authority is to be exercised is what forms the *constitution of the State.* In it can be seen the organization by means of which the Nation acts as a political body; how and by whom the people are to be governed, and what are the rights and duties of those who govern. This constitution is nothing else at bottom than the establishment of the system, according to which a Nation proposes to work in common to obtain the advantages for which a political society is formed.

§ 28. **A nation should choose the best one.** It is therefore the constitution of a State which determines its progress and its aptitude to attain the ends of the society; hence the chief interest of a Nation which forms a political society, and its first and most important duty to itself, is to choose the best possible constitution, and the one most suited to its circumstances. In so choosing it lays the foundations of its self-preservation, its welfare, its advancement, and its happiness. It can not take too great care that these foundations be solid.

§ 29. **Public, fundamental, and civil laws.** Laws are rules laid down by the public authority to be observed in society. They ought all to have in view the welfare of the State and of its citizens. Laws which are passed directly in view of the public welfare are *public laws;* and in this class those which relate to the body itself and the very nature of the society, to the form of government and the manner in which the public authority is to be exercised—those laws, in a word, which together form the constitution of the State are the *fundamental laws.*

Civil laws are those which regulate the rights and the conduct of the citizens among themselves.

Every Nation that does not wish to fail in its duty to itself must give the utmost care that these laws, and above all the fundamental laws, be established wisely, and in a manner suited to the character of the people and to all the circumstances in which they may happen to be. It must determine them with precision and make them clearly understood, in order that they may possess stability, and neither be eluded nor give rise, if possible, to dissension; so that he or they to whom the exercise of the sovereign power shall be confided, on the one hand, and the citizens on the other, may equally understand their duties and their rights. This is not the place to consider in detail what should be the character of this constitution and these laws, for a discussion of that belongs to the field of public law and politics. Besides the laws and the constitution of different States must vary according to the character of the people and other circumstances. We can only touch on them in a general way in a treatise on the Law of Nations. The duties of a Nation towards itself are here considered mainly to determine what its conduct should be in that larger society which nature has established among the peoples of the world.

Those duties give it certain rights, which direct it in determining what it can demand from other Nations, and what, on the other hand, others can expect from it.

§ 30. The maintenance of the constitution, and obedience to the laws.

The constitution of a State and its laws are the foundation of public peace, the firm support of political authority, and the security for the liberty of the citizens. But this constitution is a mere dead letter, and the best laws are useless if they be not sacredly observed. It is therefore the duty of a Nation to be ever on the watch that the laws be equally respected, both by those who govern and by the people who are to be ruled by them. To attack the constitution of a State and to violate its laws is a capital crime against society; and if the persons who are guilty of it are those in authority, they add to this crime a perfidious abuse of the power confided to them. A Nation must uniformly put down such violations with all the vigor and vigilance which the importance of the case demands. The constitution and laws of a State are rarely attacked from the front; it is against secret and gradual attacks that a Nation must chiefly guard. Sudden resolutions strike men's imaginations; their history is written, and their secret sources made known; but changes are overlooked when they come about insensibly by a series of steps which are scarcely noted. One would do a great service to Nations by showing from history how many States have thus changed their whole nature and lost their original constitution. The attention of peoples would be awakened, and thenceforth in the realization of that excellent maxim, no less essential in politics than in morality, *principiis obsta*, they would not close their eyes to innovations which, though of little account in themselves, serve as so many steps to advance to higher and more disastrous undertakings.

§ 31. Rights of a nation with respect to its constitution and its government.

Since the results of a good or a bad constitution are of such importance, and since a Nation is strictly obliged to procure, as far as is possible, the best and most suitable one, it has a right to all the means necessary to fulfill that obligation (§ 18). Hence it is clear that a Nation has full right to draw up for itself its constitution, to uphold it, to perfect it, and to regulate at will all that relates to the government, without interference on the part of anyone. The government is established only for the Nation, with a view to its welfare and its happiness.

§ 32. It can reform its government.

If, then, a Nation should come to be dissatisfied with the public administration, it can introduce order and reform into the government. But mark that I say "a Nation"; for I am far from meaning to authorize a few malcontents and revolutionists to disturb those in power by exciting complaint and sedition. It is the body of the Nation alone which has the right to check its rulers when they abuse their power. When the Nation keeps silent and obeys it is regarded as approving the conduct of its rulers, or at least as finding it supportable; and it does not belong to a small number of citizens to endanger the State under pretence of reforming it.

§ 33. And change its constitution.

On the same principles it is unquestionable that a Nation which finds its very constitution unsuited to it has the right to change it.

No difficulty arises when the whole Nation unanimously desires the change. But, we are asked, what must be done if the Nation is divided? In the ordinary affairs of the State the opinion of the majority must pass unquestioned as that of the whole people; otherwise it would be impossible for the society to pass any measures at all. By like reasoning it appears that a Nation can change the constitution of the State by a majority of votes; and provided there be nothing in the change which can be regarded as contrary to the very act of civil association, and to the intentions of those who, thus united together, all are bound to conform to the will of the majority. But another case is presented when there is question of throwing off a form of government to which alone the citizens appear to have given their submission when they entered into the bonds of civil society. If the majority of a free people, after the example of the Jews in the time of Samuel, should grow weary of their liberty and desire to subject themselves to the rule of a king, certain citizens, more tenacious of that liberty, so dear to those who have tasted it, although constrained to let the majority have their way, are by no means bound to submit to the new government. They may leave a society which thus seems to be undergoing a process of dissolution and re-creation; and they have the right to withdraw elsewhere—to sell their lands and to carry away all their goods.

§ 34. The legislative power; whether it can change the constitution.

Still another important question is here presented. It belongs essentially to the social body to make laws concerning the manner in which it is to be governed and the conduct of its citizens. This function is called the *legislative power*. The exercise of it may be confided by the Nation to the Prince, or to an assembly, or to both conjointly; and they are thereby empowered to make new laws and to repeal old ones. The question arises whether their power extends to the fundamental laws, whether they can change the constitution of the State. The principles we have laid down lead us to decide definitely that the authority of these legislators does not go that far, and that the fundamental laws must be sacred to them, unless they are expressly empowered by the nation to change them; for the constitution of a State should possess stability; and since the Nation established it in the first place, and afterwards confided the *legislative power* to certain persons, the fundamental laws are excepted from their authority. It is clear that the society had only in view to provide that the State should be furnished with laws enacted for special occasions, and with that object it gave to the legislators the power to repeal existing civil laws, and such public ones as were not fundamental, and to make new ones. Nothing leads us to think that it wished to subject the constitution itself to their will. In a word, it is from the constitution that the legislators derive their power; how, then, could they change it without destroying the source of their authority? By the fundamental laws of England the two Houses of Parliament, in concert with the King, exercise the legislative power. If the two Houses should take it into their heads to suppress themselves and to invest the King with full and absolute power, certainly the Nation would not put up with it. And who shall say that it would not have the right to protest? But if Parliament were to deliberate on so momentous a change, and the whole Nation were to voluntarily keep silent, we might conclude that the Nation approved of the act of its representatives.

§ 35. A nation should do so only with great caution.

However, in discussing changes in a constitution, we are here speaking only of the right; the expediency of such changes belongs to the field of politics. We content ourselves with the general remark that it is a delicate operation and one full of danger to make great changes in the State; and since frequent changes are hurtful in themselves, a Nation ought to be very circumspect in this matter and never be inclined to make innovations, except from the most urgent reasons or from necessity. The fickle spirit of the Athenians ever operated against the prosperity of their Republic, and in the end was destructive of that liberty which they guarded so jealously but knew not how to enjoy.

§ 36. It is judge of all disputes about the government.

We infer from what has been said that if there arise in the State disputes over the fundamental laws, over the public administration, or over the rights of the various powers which have a share in it, it belongs to the Nation alone to decide them, and to settle them according to its political constitution.

§ 37. No foreign power has a right to interfere.

Finally, all such matters are of purely national concern, and no foreign power has any right to interfere otherwise than by its good offices, unless it be requested to do so or be led to do so by special reasons. To intermeddle in the domestic affairs of another Nation or to undertake to constrain its councils is to do it an injury.

CHAPTER IV.

The Sovereign; His Obligations and His Rights.

§ 38. The sovereign.

A long discussion of the rights of *sovereignty* and of the duties of a prince will not be looked for here; it must be sought after in a treatise upon public law. Our intention in this chapter is to show by an inference from the leading principles of the Law of Nations what a sovereign is and what are his obligations and rights in general.

We have said that *sovereignty* is the public authority which commands in civil society and which regulates and directs what each member must do to attain the end of the society. This authority belongs originally and essentially to the whole body of the society, to which each member in submitting himself yielded his natural right of directing his conduct according to his own reason and good pleasure and of seeing for himself that justice was done him. But the body of the society does not always retain this sovereign authority; it frequently takes the step of confiding it to a Senate or to a single person. This Senate or that person then becomes the *sovereign*.

§ 39. He is appointed only for the safety and welfare of the society.

It is clear that men only form a political society and submit to its laws for their own welfare and security. The public authority is therefore established merely for the common good of all the citizens; and it would be absurd to think that it can change its nature when passing into the hands of a Senate or of a monarch. Hence it would be at once ridiculous and contemptible for flattery to deny that the sovereign is solely appointed for the safety and welfare of the society.

A good prince and a wise ruler of the society ought to be fully impressed with this great truth—that the sovereign power is confided to him only for the safety of the State and the good of the whole people; that he is not permitted to be self-seeking in his administration of affairs, nor to regard his own pleasure or advantage; but that he must direct his whole policy and all his measures to the greatest good of the State and of the people who are subject to him. How pleasing it is to see an English King give account to his Parliament of his principal undertakings, assuring that representative body of the Nation that he has no other end in view than the honor of the State and the good of his people, and thanking warmly all those who are in sympathy with such salutary views. Certainly that monarch is alone great, in the opinion of the wise, who uses language such as this and proves its sincerity by his conduct. But these maxims have long been forgotten in most kingdoms because of base flattery. A crowd of servile courtiers can easily persuade a proud monarch that the Nation exists for him and not he for the Nation. He soon comes to look upon the Kingdom as a patrimony which is his own property and upon the people as a herd of cattle whence he can draw his wealth and of which he can dispose to carry out his own designs and to satisfy his passions. This is the source of those disastrous wars undertaken from ambition, restlessness, hatred, or pride. This is the source of those oppressive taxes the revenues from which are scattered by extravagance or turned over to mistresses and favorites. This is the reason that important positions are conferred as favors, while merit is overlooked, and all functions that do not directly interest the Prince are left for ministers and their subordinates. Who would recognize in this wretched government an authority established for the public good? A good prince will be on his guard even against his virtues. Let us not say with certain writers that the virtues of individuals are not the virtues of kings—a maxim of superficial politicians or a loose use of words. Kindness, friendship, and gratitude are still virtues for the throne; and would to heaven they could always be found there. But a wise king does not follow unreservedly their impulse. He cherishes them, he practices them in his private life; but when he acts in the name of the State he is intent only upon justice and sound statesmanship. Why so? Because he knows that the government has been intrusted to him only for the good of the society, and that he must not be self-seeking in the use which he makes of his power. He moderates his kindness by prudence. He makes his friends the recipients of domestic and private favors; but he distributes offices and public employment according to merit, and public awards because of services rendered to the State. In a word, he uses the public power only in view of the public good. It is all summed up in that fine saying of Louis XII: "A King of France never avenges the injuries of a Duke of Orleans."

§ 40. His representative character.

The political society is a moral person (Introd., § 2) inasmuch as it possesses an understanding and a will which it makes use of in the conduct of its affairs, and inasmuch as it is capable of obligations and of rights. When, therefore, it confers the sovereignty upon a certain person it vests in him its understanding and its will; it makes over to him its obligations and its rights as far as they relate to the administration of the State and the exercise of the public authority. The leader of the State, the sovereign, thus becomes the depositary of the obligations and rights relating to the government, and in him is to be found the moral person which, without ceasing to exist fundamentally in the Nation, no longer acts except through him and by him. Such is the origin of the representative character attributed to the sovereign. He represents the Nation in all matters which belong to his position as a sovereign. It is no reflection upon the dignity of the proudest monarch that this representative character is attributed to him; on the contrary, nothing could add greater distinction to it; for thus the monarch unites in his person all the majesty which belongs to the whole body of the Nation.

§ 41. He bears the obligations of the nation and is invested with its rights.

Since the sovereign is thus clothed with the public authority and with all that goes to make the moral personality of the Nation, he thereby becomes the bearer of the obligations of that Nation and is invested with its rights.

§ 42. His duty with respect to the preservation and advancement of the nation.

All that we have said in Chapter II of the general duties of a Nation towards itself has particular application to the sovereign. As trustee of the governing power and of the right to control whatever pertains to the public good, like a wise and tender father and faithful administrator, he ought to watch over the Nation and to use all care to preserve it, to render it more perfect, to improve its condition, and to defend it as far as he can from all that might threaten its safety or its happiness.

§ 43. His rights in this respect.

Hence all the rights which the obligation of self-preservation and of self-advancement gives to a Nation (see §§ 18, 20, and 23, of this Book), all these rights, we repeat, reside in the sovereign, who is variously called *ruler* of the society, *chief*, *prince*, etc.

§ 44. He ought to know his nation.

We have remarked above that every Nation ought to know itself. This obligation falls upon the sovereign, since it is for him to watch over the preservation and advancement of the Nation. This duty imposed by the natural law upon the rulers of Nations is one of extreme importance and wide extent. They ought to know minutely the entire country subject to their authority, its characteristics, its defects, its advantages, its situation with respect to its neighbors; they ought to obtain a perfect knowledge of the customs and general tendencies of their Nation, its virtues, its vices, its talents, etc. Information on all these points is necessary for good government.

§ 45. Extent of his power; royal prerogatives.

The Prince receives his authority from the Nation; he possesses just so much of it as the Nation has thought well to confer upon him. If the Nation has committed to him the sovereign power purely and simply without limitation or qualification, it is regarded as having conferred upon him all the rights without which the sovereign authority or governing power can not be exercised in the manner most conducive to the public good. These rights are called the "prerogatives of kingship" or "the royal prerogatives."

§ 46. The prince must respect and maintain the fundamental laws.

But when the sovereign power is limited or regulated by the fundamental laws of the State, these laws define the extent and the bounds of his power and the manner in which he must exercise it. A prince is, therefore, strictly bound not only to respect them, but also to uphold them. The constitution and the fundamental laws are the plan according to which the Nation has determined to work its way to prosperity. Their execution is intrusted to the Prince; let him follow that plan religiously; let him look upon the fundamental laws as inviolable and sacred, and let him understand that the moment he departs from them his commands are unjust and are but a criminal abuse of the power confided to him. In virtue of that power he is the guardian and the defender of the laws; and being bound to check whosoever shall dare to violate them, how could he tread them under foot himself?

§ 47. Whether he can change the laws which are not fundamental.

If the Prince be invested with the legislative power he may in his wisdom, when the good of the State requires it, abolish laws which are not fundamental and enact new ones. (See our remarks on this subject in the preceding chapter, § 34.)

48. He must uphold and observe the existing laws.

But so long as the laws exist the sovereign must uphold them and observe them strictly. They are the foundation of the public peace and the firmest support of the sovereign authority. All is uncertain, turbulent, and revolutionary in those unfortunate States where the ruler has absolute power. Hence it is the truest interest of the Prince as well as his duty to uphold the laws and to respect them; and he must submit to them himself. This truth is upheld in a writing published by order of Louis XIV, one of the most absolute monarchs Europe has ever seen reign: "Let no one ever say that the sovereign is not subject to the laws of his State, since the contrary proposition is one of the truths of the Law of Nations which flattery has at times attacked, but which good princes have always defended as the tutelar divinity of their States." (*a*)

§ 49. In what sense he is subject to the laws.

But we must explain how the Prince is subject to the laws. First of all, he must, as we have seen, follow their commands in all the acts of his administration. In the second place, he is himself subject in all his private affairs to all the laws which concern property rights. I say in his private affairs; for when he acts as Prince and in the name of the State he is subject only to the fundamental laws and those of the Law of Nations. In the third place, the Prince is subject to certain general rules of the civil law regarded as inviolable in the State, unless he be excepted from their operation, either expressly by law or impliedly as a necessary result of his position. I would refer here to laws which deal with the relations of one individual to another, and above all to those which regulate the validity of marriages. These laws are established to secure family relations. Now, it is above all impor-

---

(*a*) Treatise on the Rights of a Queen to the Several States of the Spanish Monarchy. 1667, in 12°, Part II, p. 191.

tant that the relations of the royal family be certain. Fourthly, let us note in general on this point that if the Prince is invested with full, absolute, and unlimited sovereignty he is above those laws which derive their force from him alone, and he can dispense himself from them whenever natural justice and equity permit him. Fifthly, as for the laws which relate to morality and good order, the Prince must unquestionably respect them and uphold them by his example. And sixthly, he is certainly above all civil penal laws. The dignity of the sovereign does not permit that he be punished like a private citizen; and his functions are of too exalted a character to allow of his being interfered with under pretense of a fault which does not directly concern the government of the State.

§ 50. His person is sacred and inviolable.

It is not enough that the Prince be above the penal laws. In the interest of Nations themselves we are carried further still. The sovereign is the soul of the society; if he be not held in veneration by the people and his life placed in perfect security, the public peace, the prosperity, and the safety of the State are in continual danger. Hence the very safety of the State demands necessarily that the person of the Prince be sacred and inviolable. The Roman people conferred this privilege upon their tribunes in order that they might be unhampered in their guard over the State and untroubled by any fear in the performance of their duties. The cares and duties of the sovereign are of much greater importance than were those of the tribunes, and not less full of danger unless he be protected by powerful safeguards. Even the wisest and most just monarch can not but make some enemies; and is the State to be exposed to the danger of losing such a prince at the hand of a fanatic? The abhorrent and absurd doctrine that a private person may kill a wicked ruler deprived France at the commencement of the last century of a hero who was truly the father of his people. (*a*) Whatever his character may be, it is an enormous crime against a Nation to deprive it of a sovereign whom it has thought well to obey.

§ 51. Nevertheless a nation may depose a tyrant and refuse obedience to him.

But this high attribute of sovereignty does not prevent a Nation from putting restraint upon an insupportable tyrant. It may even pass sentence upon him, respecting in his person the dignity of his rank, and withdraw itself from obedience to him. It is to this incontestable right that a powerful republic owes its birth. Owing to the tyranny of Philip II in the Netherlands, those provinces revolted; seven of them, in a close confederation, courageously maintained their liberty under the leadership of the House of Orange; and Spain, after ineffectual and disastrous efforts, recognized them as sovereign and independent States. If the authority of the Prince is limited and regulated by the fundamental laws, whenever he goes beyond the limits prescribed to him he commands without right and even without title; the Nation is not bound to obey him and may resist his unlawful undertakings. The moment he attacks the Constitution of the State the Prince breaks the contract which bound the people to him; and the people become free by the act of the sovereign and henceforth they regard him as an usurper seeking to oppress them. This truth is recognized by every thinking writer whose pen is not under the influence of fear or of self-interest. But certain celebrated authors maintain that if the Prince is invested with the supreme full and absolute power of government, no one has the right to resist him, much less to put restraint upon him, and all the Nation can do is to suffer with patience and to obey. They base their opinion upon the fact that such a sovereign is accountable to no one for the manner in which he governs, and that if the Nation could control his actions when

---

(*a*) Since the above was written, France has seen these horrors renewed. It shudders to think that it has brought forth a monster capable of attacking the majesty of kingship in the person of a prince who, by his noble qualities, merits the love of his subjects and the reverence of foreigners.

it finds them unjust and resist him, his authority would no longer be absolute, which would be contrary to the hypothesis. They say that an absolute sovereign possesses the full and entire political authority of the society which no one can oppose; that if he abuses it he does wrong indeed and offends his conscience, but that his commands are none the less obligatory, since they are founded on a lawful right to command; and that the Nation, in giving him absolute power, reserved nothing to itself, but committed itself to his discretion, etc. We might content ourselves with answering that under such a contention there can be no such thing as a fully absolute sovereign. But in order to dissipate all these vain subtleties, let us recall the essential object of civil society: Is it not to work in concert for the common good of all? Was it not for this that each citizen divested himself of his rights and submitted his liberty? Could the society make use of its authority to deliver irrevocably itself and all its members to the discretion of a cruel tyrant? Surely not; since it would lose all rights of its own if it undertook to oppress any part of the citizens. When, therefore, it confers the supreme and absolute power of government without express reserve, there is necessarily an implied reserve that the sovereign will use that power for the welfare of the people and not for their destruction. If he makes himself the scourge of the State he disgraces himself; he becomes no better than a public enemy, against whom the Nation can and ought to defend itself. And if he has carried his tyranny to the extreme, why should the life itself of so cruel and faithless an enemy be spared? Who would presume to blame the action of the Roman Senate in declaring Nero the enemy of his country?

But it is extremely important to note that this judgment can only be passed by the Nation or by a body representing it, and that the Nation itself can not attack the person of the sovereign, except in cases of extreme necessity, and when the Prince, by violating all the laws and threatening the safety of his people, puts himself in a state of war against the Nation. It is the person of the sovereign which for its own interest the Nation declares inviolable and sacred, not that of an inhuman tyrant and a public enemy. It is rare that we see such monsters as Nero. More commonly, when a prince violates the fundamental laws, when he attacks the liberties and rights of his subjects, or, in case he is an absolute monarch, when his government, without going to extremes of violence, clearly tends to the ruin of the Nation, it may resist him, may pass sentence upon him, and refuse obedience to him. But even then it should spare his life for the good of the State. More than a century has passed since the English rose up against their King and forced him from the throne. Certain bold, crafty, and ambitious men profited by the terrible upheaval caused by fanaticism and party spirit; and Great Britain allowed her sovereign to perish unworthily on a scaffold. The Nation recovered its senses and recognized its rashness. If each year it makes a solemn reparation this is not only because it recognizes that the unfortunate Charles I did not merit so cruel a fate, but without doubt also because it is convinced that for the very safety of the State the person of the sovereign should be sacred and inviolable, and that the whole Nation ought to see that this principle be held in reverence, and ought itself to respect it when the care of its own preservation permits.

One word more on the distinction which is sought to be made here in favor of an absolute sovereign. Anyone who has well weighed the incontestable principles that we have established will be convinced that whenever there is question of resisting a prince who has become a tyrant the *rights* of the people are always the same, whether by the law the prince be absolute or not; for these *rights* are derived from the object of every political society, the welfare of the Nation, which is the supreme law. But if the above distinction has no bearing as a question of *right*, it certainly has in practice, as a question of *expediency*. As it is very difficult to oppose an absolute prince, and as it can not be done without exciting great disturbance in the State and dangerous and violent uprisings, it ought not to be attempted except in extreme cases, when the evil has risen to such a point that it can be said with Tacitus, "*miseram pacem vel bello bene mutari*"; that it is better to expose themselves to civil war than to endure them. But if the authority of the Prince is limited, if it depends in some respects upon a Senate or upon a Parliament representative of the Nation, there are means of resisting him and of putting a check upon him without exposing the State to violent shocks. There is no reason for waiting till the evil is extreme when mild and harmless remedies can be applied.

§ 52. Arbitration between the prince and his subjects.

But however limited the authority of the Prince may be, it rarely happens that he puts up patiently with resistance, or submits himself peacefully to the judgment of his people. And as the dispenser of favors will he be wanting in support? We see too many base and ambitious persons for whom the condition of a wealthy and honored slave has more charms than the position of an unassuming and virtuous citizen. It is therefore always a difficult matter for a Nation to resist its ruler and pass sentence upon his conduct without exposing the State to serious disturbances and to shocks capable of overturning it. This has sometimes brought about an agreement between the Prince and his subjects to submit the controversies which have arisen between them to the judgment of a friendly power. Thus the Kings of Denmark formerly submitted to the Kings of Sweden by solemn treaties the decision of differences which might arise between them and their Senate; and the Kings of Sweden did the same to those of Denmark. The Princes and the States of West Friesland and the citizens of Emden in like manner made the Republic of the United Provinces judge of their differences. The Princes and the town of Neufchatel in 1406 made the canton of Berne perpetual judge and arbiter of their disputes. Thus also, in accord with the spirit of the Swiss Confederation, the entire body takes cognizance of the disputes which arise in any of the confederated States, although each of them is truly sovereign and independent.

§ 53. Obedience which the subjects owe to the sovereign.

As soon as a Nation recognizes a prince as its legitimate sovereign all the citizens owe him faithful obedience. He can not govern the State nor perform what the Nation expects from him unless he is obeyed in every point. Hence in doubtful cases the subjects have no right to examine the wisdom or justice of the sovereign commands. That is the function of the Prince, and the subjects must presume, as far as is possible, that all his commands are just and beneficial; he alone is accountable for any evil that may result from them.

§ 54. In what cases he may be resisted.

Nevertheless this obedience ought not to be absolutely blind. No agreement can bind, or even authorize, a man to violate the natural law. All authors who have any conscience or sense of honor agree that no one should obey commands which are clearly contrary to that sacred law. Those governors of towns who bravely refused to execute the barbarous orders of Charles IX on the memorable St. Bartholomew's Day have been universally praised. "Sire," wrote the brave d'Orte, commander at Bayonne, "I have communicated your Majesty's order to the loyal inhabitants and soldiers of the garrison; I have found there only good citizens and brave soldiers, but not a single executioner. For this reason both they and I humbly supplicate your Majesty to be pleased to employ our strength and our lives in things possible of fulfillment, and however hazardous they be we will expend ourselves in them to the last drop of our blood." (*a*) The Count de

---

(*a*) Mezeray, Histoire de France, Tom. II, p. 1107.

Tende, Charny, and others made answer to those who brought the orders of the Court that they had too great respect for the King to believe that such barbarous commands came from him. It is a more difficult matter to decide in what cases a subject may not only refuse to obey but even resist the sovereign and meet force with force. If the sovereign does a wrong to anyone he acts without any real authority; but we can not immediately conclude that the subject may resist him. The nature of sovereignty and the good of the State do not permit citizens to oppose a ruler whenever his commands appear to them unjust or harmful. Such an attitude would throw them back into a state of nature and would render government impossible. A subject ought to bear patiently from the Prince all acts where the injustice is doubtful and where it is supportable; the former for the reason that whoever submits to a judge may no longer pass upon his own claims; the latter because such a sacrifice is due to the peace and welfare of the State, in favor of the great advantages which are obtained from civil society. It is taken for granted that every citizen impliedly agrees to this diminution of his rights, because without it society could not exist. But when it is a case of clear and glaring wrongs, when a prince for no apparent reason attempts to take away our life, or deprive us of things without which life would be miserable, who will question the right to resist him? The care of our existence is not only a matter of natural right but of natural obligation as well; no man may give it up entirely and absolutely; and even though he could give it up, is it to be thought that he has done so by the compact of civil society when he entered into it for the sole purpose of obtaining greater security for his personal safety? The welfare of society does not indeed demand such a sacrifice. As Barbeyrac has well said in his notes on Grotius, "if it is in the interest of the public that those who obey should put up with some inconveniences, it is none the less for the public interest that those in authority should fear to test their patience too severely." (*a*) The Prince who violates all laws, who has no consideration for others, and who seeks in his violence to deprive an innocent person of life, divests himself of his authority; by his injustice and cruelty he becomes no more than an enemy, against whom it is allowed to defend oneself. The person of the sovereign is inviolable and sacred; but when a sovereign has abandoned all the sentiments proper to a sovereign not only in heart but even in appearance and in exterior conduct, he loses his rank; he no longer plays the part of sovereign, and can not retain the privileges attached to that sublime character. Nevertheless if this prince be not a monster of iniquity, if he be violent only towards us and from a sudden transport of passion, if in other respects he can be endured by the rest of the Nation, the consideration which we should have for the peace of the State is so great, and the respect for the sovereign power so controlling, that we are strictly bound to seek every other means of protecting ourselves rather than put the person of the Prince in peril. Everyone knows the example David gave; he fled, he kept himself in hiding to escape the wrath of Saul, and more than once spared the life of his persecutor. When by an unfortunate accident Charles VI, King of France, suddenly lost his mind, he killed in his madness several of those who were with him. But none of them thought of saving their lives at the cost of the life of the King; they only sought to disarm him and to overcome him. They did their duty as brave men and faithful subjects by exposing their lives for that of the unfortunate monarch—a sacrifice which is due to the State and to the sovereign power. Since

---

(*a*) Droit de la Guerre et de la Paix, Liv. I, ch. IV, § II, N. I.

his violence was the result of insanity, Charles was not accountable; he might have recovered his health and have become once more a good king.

§ 55. Ministers.

We have discussed these questions sufficiently for the purposes of this work; a more extended treatment of them can be found in several well-known books. We conclude the subject with an important observation. A sovereign may certainly choose ministers to assist him in his difficult functions; but he must never turn over to them his authority. In choosing him as ruler the Nation did not mean to have itself turned over to other hands. Ministers should be mere instruments in the hands of the Prince; he must direct them continually, and watch carefully whether they act according to his instructions. If through the infirmities of age or sickness of any kind the Prince is unable to rule, a regent should be appointed in conformity with the laws of the State. But as soon as the sovereign can hold the reins let him be assisted in his work, but not supplanted. The last of the first line of French Kings turned over their government and their authority to the mayors of the palace. Having become mere figureheads, they were justly deprived of the title and honors of a position the duties of which they had abandoned. A Nation has everything to gain in crowning an all-powerful minister; for he will cultivate as his own possession that soil which he pillaged so long as he only had an uncertain enjoyment of it.

CHAPTER V.

Elective States, States with a Succession or Hereditary States, and Those Called Patrimonial.

§ 56. Elective states.

We have seen in the preceding chapter that the grant of the supreme authority and the choice of him who is to exercise it belong originally to the Nation. If it confer the sovereignty only on the person of the sovereign, reserving to itself the right to elect a successor after his death, the State is *elective*. As soon as the Prince is elected according to the laws he enters upon all the rights which in virtue of those laws belong to his position.

§ 57. Whether elective kings are real sovereigns.

The question has been raised whether elective Kings and Princes are real sovereigns. But one who gives weight to that circumstance can have but a very confused idea of sovereignty. The manner in which a prince obtains his position has nothing to do with determining its nature. The two points to be considered are, first, whether the Nation itself forms an independent society (see Chapter I), and secondly, what is the extent of the power it has conferred on its Prince? Whenever the ruler of an independent State truly represents his Nation, he must be regarded as a real sovereign (§ 40), even though his authority should be limited in certain respects.

§ 58. States with a succession and hereditary states; origin of the right of succession.

When a Nation wishes to avoid the disturbances which can hardly fail to accompany the election of a sovereign, it makes its choice for a long series of years by establishing the *right of succession* or by making the crown hereditary in a family, in accordance with the regulated order which seems best suited to the Nation. A State or Kingdom is called *hereditary* when the successor to the throne is fixed by the same law which regulates the succession of private persons; and it is said to have a *succession* when the line of succession follows a special fundamental law of the State. Thus in France there exists the lineal succession of males only.

§ 59. Another origin, which amounts to the same thing.

The right of succession is not always originally fixed by the Nation; it may have been introduced by grant from another sovereign, or even by usurpation. But when it rests upon a long possession the people are regarded as having consented to it; and this implied consent makes it legitimate, even though the origin be unlawful. It then rests upon the same foundation which we have just pointed out, the sole lawful and secure one, to which we must always return.

§ 60. Other sources which also amount to the same thing.

This same right can, moreover, according to Grotius and the majority of authors, come from other sources, as from conquest, or from the right of an owner, who, on becoming master of a country, should invite persons to settle there and should give them lands on condition that they recognize him and his heirs as their sovereigns. But as it is absurd to think that a society of men could subject themselves except in view of their safety and welfare, and more absurd still that they could bind their posterity on any other basis, we come back to where we were at first, and must reassert that the succession is established by the express will or by the implied consent of the people for the welfare and security of the State.

§ 61. The nation can change the order of succession.

It remains, then, a fixed rule in every case that the succession is established or accepted only in view of the public good and the common safety. If it should happen, therefore, that the established order of succession should become prejudicial to the State, the people would certainly have the right to change it by a new law. "*Salus populi suprema lex*"—the welfare of the people is the supreme law—and this law is of the strictest justice, since the people have only entered into the bonds of society in view of their welfare and their greater advantage.

This pretended right of ownership attributed to princes is a mere fancy resulting from a mistaken application of the laws relating to private inheritances. The State is not, and can not be, a patrimony, since a patrimony exists for the advantage of the possessor, whereas the prince is appointed only for the good of the State. The conclusion is evident. Should the Nation see clearly that the heir to the throne will prove a dangerous sovereign, it may exclude him.

The authors we are opposing grant this right to a despotic prince, although they refuse it to Nations. This is because they regard such a prince as a real owner (propriétaire) of the Empire. They will not recognize that the care of its own welfare and the right of self-government belong essentially to a civil society at all times, although it may have confided them, even without any express reservation, to a monarch and his heirs. In their eyes the Kingdom is the inheritance of the Prince, in the same manner as his fields and his flocks—a principle hurtful to humanity, which no one would dare to assert in an enlightened age if it did not rest upon an authority often stronger than reason and justice.

§ 62. Renunciations.

For the same reason the Nation can enforce a renunciation of its claim by a branch of the family which is established outside the Nation by the marriage of a daughter to a foreign prince. Such renunciations, exacted or approved by the State, are perfectly valid, since they are equivalent to a law passed by the State for the exclusion from the throne of those who make them and their posterity. Thus the English law debars forever every Roman Catholic heir. "Thus a law of Russia at the beginning of the reign of Elizabeth very wisely excludes any heir who should possess another Kingdom; and so a law of Portugal rejects any foreigner who should have a claim to the throne by right of blood."(*a*)

Certain noted authors, in other respects learned and judicious, have therefore overlooked the true principles in treating of renunciations. They have spoken at length of the rights of children, born or to be born, and of the transmission of these rights, etc. They should have considered the succession less as a property right of the reigning family than as a law of the State. From this clear and undeniable principle is easily derived the whole doctrine of renunciations. Those which the State has exacted or approved are valid and sacred, being fundamental laws. Those which are not authorized by the State can be binding only upon the Prince who has made them; they can not restrict his descendants, and he himself can withdraw from them in case the State has need of him and calls him to the throne; for he owes his services to the people who have intrusted to him the care of their welfare. For the same reason a prince may not lawfully renounce the throne at an unseasonable time, to the detriment of the State, nor abandon in time of danger a Nation which has intrusted itself to his hands.

§ 63. The order of succession should ordinarily be followed.

In ordinary cases, when the State can follow its established rule without exposing itself to great or manifest danger, every descendant ought of a certainty to succeed when called to the throne by the order of succession, however incapable he be of reigning by himself. This follows from the spirit of the law which has established the succession; for the very purpose of having recourse to it is to prevent disturbances which otherwise would be inevitable at every change of sovereign. Now little progress would be made in that direction if, on the death of a prince, it were permitted to examine the capacity of his heir to reign before recognizing him. "What an opportunity this would give for usurpers and dissatisfied per-

---

(*a*) Esprit des Loix, Liv. XXVI, Ch. XXIII, where good political reasons may be found for these regulations.

sons! . . . It was to avoid these very inconveniences that the order of succession was established; and no wiser step could have been taken, since the successor need only be the son of the Prince, and be alive, neither of which points can admit of dispute; whereas there is no fixed rule for judging of capacity or incapacity to reign."(*a*) Although the succession is not established for the private advantage of the sovereign and his family, but for that of the State, still the successor in line is not without a right which in justice must be recognized. His right is second to that of the Nation and to the welfare of the State; but effect should be given to it when the good of the public does not prevent.

§ 64. Regents. These reasons have so much force that the law, or the State, can supply for the incapacity of a prince by appointing a regent, as is done in the case of minors. The regent is invested with the royal authority for the entire time of his administration; but he exercises it in the name of the King.

§ 65. Indivisibility of sovereignties. The principles we have just established concerning the right of succession and of heredity make it clear that a prince has no right to divide the State among his children. Every sovereignty properly so called is of its nature one and indivisible, since those who have united in society may not be separated against their will. Although contrary to the nature of sovereignty and the preservation of the State, these partitions of Empire have been very often made; they have ceased to take place wherever Nations and princes themselves have come to see what was for their best interest and what was the basis of their welfare.

But when a prince has united under his sway several distinct Nations, his Empire is then really a group of different societies subject to the same ruler, and there is nothing in the nature of things to prevent a partition among his children. He may make a distribution, provided there be no law or agreement to the contrary, and provided each of the Nations agree to receive the sovereign assigned it. On this ground France was divisible under the first two lines of Kings.(*b*) Being finally completely consolidated under the third, France has been regarded as a single Kingdom, it has become indivisible, and there is a fundamental law to that effect. This law wisely provides for the preservation and prosperity of the Kingdom by irrevocably uniting to the crown all the acquisitions made by its Kings.

§ 66. Who has the right to decide disputes regarding the succession to the throne. The same principles will also furnish us the solution of a much-discussed question. When it is not clear who has the right to succeed in a State having a fixed succession and two or more claimants to the throne present themselves, the question arises, who is to be judge of their claims? Certain learned men, in the belief that sovereigns have no other judge but God, have maintained that claimants to the throne, in cases where their rights are not clear, ought to come to a friendly agreement or to arrange a settlement, or choose arbitrators, or draw lots, or finally to settle the dispute by arms; the subjects having no right at all to decide. It might be a matter of astonishment that reputable authors have taught such a doctrine. But as in mere questions of speculative philosophy there is nothing so absurd that it has not been put forward by some philosopher or other,(*c*) what may we not expect from a mind under the influence of self-interest or fear? To think that in a question which concerns no one so much as the Nation, which relates to a power established solely in view of its welfare, in a dispute which may perhaps determine for all time the dearest interest and the very welfare of the Nation, to think that it is

---

(*a*) Memorial in behalf of Madame de Longueville, concerning the Principality of Neufchatel, in 1672.

(*b*) It must be observed that these partitions were not made without the approval and consent of the respective States.

(*c*) Nescio quomodo nihil tam absurde dici potest, quod non dicatur ab aliquo philosophorum. (Cicero, De Divinatione, Bk. II.)

to stand by as an unconcerned spectator! Is it to permit strangers, or the blind chance of war, to assign it a master, as a flock of sheep would wait till it be decided whether they are to be turned over to the butcher or given back to the care of their shepherd!

But, they say, a Nation has renounced all right of decision in the matter by giving itself up to a sovereign; it has subjected itself to the reigning family, and has conferred upon the descendants a right which no one may thereafter take from them; it has put them over it and may no longer judge them. Well, then, is it not for this very Nation to recognize him to whom it is bound, and to prevent itself from being handed over to another? And since it has established the law of succession, who may better or more rightfully than it decide which of the claimants comes within the provisions of the fundamental law? Hence we assert without hesitation that the decision of this important question belongs to the Nation and to it alone. Even if the claimants have entered into an agreement or chosen arbitrators, the Nation is not bound to submit to their decision unless it has consented to the agreement or to the arbitration. Princes who have not been acknowledged, and whose claim is uncertain, can not in any way control a Nation's obedience; for when its most sacred duties and most precious rights are at stake, a Nation recognizes no higher judge than itself.

Grotius and Pufendorf do not greatly differ from our opinion in essentials; but they are unwilling to have the decision of the people, or of States, termed a judicial sentence (*judicium jurisdictionis*). Let it be so! We shall not quarrel over terms. Nevertheless, there is more in this question than a mere examination of rights before submitting to that claimant which has the better right. Every such dispute which arises in civil society ought to be judged by the public authority. As soon as the right of succession becomes uncertain the sovereign authority returns for a time to the whole body of the State, which must exercise it either in person or through representatives, until the real sovereign be recognized. "The dispute over this right suspends the functions belonging to the person of the sovereign, and the sovereign authority naturally returns to the subjects, not to be retained by them, but in order to make clear on which of the claimants it lawfully devolves, and to turn it over into his hands. It would not be difficult to substantiate by numerous examples a truth so clear from reason itself; but it is enough to recall that it was the estates of the Kingdom of France which terminated, after the death of Charles the Fair, the famous dispute between Philip de Valois and the King of England (Edward III), and that these estates, although subject to him in whose favor they decided, did not cease to be judges of the dispute." (*a*)

Guicciardini, Book XII, also relates that it was the estates of Arragon which adjudged the succession to that Kingdom and which preferred Ferdinand, the grandfather of Ferdinand, husband of Isabella, Queen of Castile, to other relatives of Martin, King of Arragon, who claimed that the Kingdom belonged to them. (*a*)

It was likewise the estates of the Kingdom of Jerusalem which passed upon the rights of claimants to the throne, as is proved by various examples in the political history of that country. (*b*)

The estates of the Principality of Neufchatel have often passed judgment, in the form of a judicial sentence, upon the succession to the sovereignty. In the year 1707 they decided between a large number of claimants and their decision in

---

(*a*) Answer in behalf of Madame de Longueville to a memorial in behalf of Madame de Némours.

(*b*) See the same memorial, which quotes the Abrégé Royal of P. Labbe, p. 501 and foll.

favor of the King of Prussia was recognized throughout Europe in the Treaty of Utrecht.

§ 67. The right of succession ought not to depend upon the judgment of a foreign power.

For the sake of securing the succession in a fixed and invariable line it is at present an established rule in all Christian States (with the exception of Portugal) that no descendant of the sovereign can succeed to the crown unless he is the offspring of a marriage in conformity with the laws of the country. As it is the Nation which has established the succession, it also belongs to it alone to recognize those who are in line to succeed. Consequently it is upon its judgment alone and upon its laws that the validity of the marriage of its sovereigns and the legitimacy of their birth ought to depend.

If education had not the effect of familiarizing the mind with the greatest absurdities, is there a thoughtful man who would not be struck with astonishment at seeing so many Nations allow the legitimacy and the rights of their princes to depend upon a foreign power? The Court of Rome has devised a great number of impediments and cases of invalidity in marriages, and at the same time it has claimed for itself the right of deciding the validity and of removing the impediment; so that a prince of its communion will not be able in certain cases to contract a marriage necessary to the welfare of his State. Juana, the only daughter of Henry IV, King of Castile, had a cruel experience of it. Certain rebels spread the report that she was the child of Bertrand de la Cueva, the King's favorite; and in spite of the declarations and the last will of the King, who constantly acknowledged Juana as his daughter and named her his heir, they called to the throne Isabella, the sister of Henry and wife of Ferdinand, heir of Arragon. The nobles of Juana's party had arranged a powerful support for her by negotiating a marriage between her and Alphonso, King of Portugal. But as this prince was Juana's uncle, a dispensation had to be obtained from the Pope, and Pius II, who was on the side of Ferdinand and Isabella, refused to grant it on the ground that the relationship was too close, although such alliances were very common at that time. These difficulties caused the Portuguese King to slacken his interest and cooled the zeal of the loyal Castilians. Isabella triumphed, and the unfortunate Juana took the veil as a religious, in order to secure, by that heroic sacrifice, the peace of Castile. (*a*)

If the prince proceeds and marries in spite of the refusal of the Pope, he exposes the State to the most serious disturbances. What would have become of England had not the Reformation happily been established there when the Pope dared to declare Queen Elizabeth illegitimate and incapable of wearing the crown?

A great Emperor, Louis of Bavaria, knew well how to maintain the rights of his crown in this respect. In the diplomatic code on the Law of Nations by Leibnitz (*b*) two acts are found in which this King condemns as an attack upon the imperial authority—the doctrine which attributes to any other power than his

---

(*a*) I draw this illustration from the work of M. Du Port de Tertre's work on Conspiracies, and I refer to him, as I have not the original historians on hand. However, I do not enter into the question of Juana's birth, as it is not to the point. The princess had not been declared illegitimate according to the laws, and the King had acknowledged her as his daughter. Besides, whether she was illegitimate or not, the inconveniences resulting from the Pope's refusal remained the same, both for her and for the King of Portugal.

(*b*) Page 54: "Forma divortii matrimonialis inter Johannem filium regis Bohemiæ et Margaretham Ducissam Karinthiæ." The emperor himself grants this divorce on the ground of the impotency of the husband, "per auctoritatem," he says, "nobis rite debitam et concessam." Page 156: "Forma dispensationis super affinitate consanguinitatis inter Ludovicum, Marchionem Brandenburg, et Margaretham Ducissam Karinthiæ, nec non legitimatio liberorum procreandorum, facta per Dom. Ludovic. IV Rom. Imper."

It is only human law, says the Emperor, which prevents these marriages, "infra gradus affinitatis sanguinis, præsertim infra fratres et sorores. De cujus legis præceptis dispensare solummodo pertinet ad auctoritatem imperatoris seu principis Romanorum." He then attacks and condemns the opinion of those who dare say that these dispensations depend upon ecclesiastics. Both this and the preceding act belong to the year 1341.

own the right to give dispensations and to decide upon the validity of marriages in places subject to his jurisdiction. But he was neither well supported in his claim during his life nor imitated by his successors.

§ 68. States called patrimonial.

Finally, there are States whose sovereign may choose his successor and even transfer the crown to another during his life. They are commonly called *patrimonial* States or Kingdoms; but we reject a term so unjust and improper. It can only give rise in the minds of certain sovereigns to ideas entirely contrary to those they ought to have. We have shown (§ 61) that a State can not be a patrimony. But it can happen that a Nation, whether as the result of complete confidence in its Prince, or for any other reason, has confided to him the duty of appointing his successor, and has even consented to receive from his hand another sovereign, if he should think fit. Thus Peter I, Emperor of Russia, although he had children, appointed his wife to succeed him.

§ 69. Every true sovereignty is inalienable.

But when a prince chooses his successor, or when he cedes the crown to another, properly speaking he only designates in virtue of the power granted to him either expressly or by implied consent—I repeat, he only designates the one who is to govern after him. This is not, and can not be, an alienation properly so called. Every true sovereignty is essentially inalienable. We shall easily be convinced of this if we consider the origin and aim of political society and of the sovereign authority. A Nation constitutes itself a social body to work for the common good as it shall think fit, and to live according to its own laws. With this object in view it establishes a public authority. If it confides this authority to a prince, even with the power to transfer his authority to other hands, that can never imply, unless the express and unanimous consent of the citizens be given, the right to really alienate it, or to subject the State to another political body; for the individuals who formed that society entered into it for the purpose of living in an independent State and by no means with the intention of submitting to a foreign yoke. Let no one allege any other source of this right, such as that given by conquest, for example. We have already shown (§ 60) that these different sources ultimately revert to the true principles of every just government. So long as the conqueror does not rule the country he has conquered by these principles, the state of war still continues in some measure; the moment he puts it really in the condition of a civil society, his rights are determined by the principles of that society.

I know that several authors, Grotius among them, (*a*) give us many instances of alienations of sovereignty. But the examples frequently prove only the abuse of power and not the right; and besides, the people consented to the alienation, either willingly or by force. What could the inhabitants of Pergamus, of Bithynia, and of Cyrenaïca do when their Kings gave them by will to the Roman people? It only remained for them to submit with good grace to so powerful a legatee. To present an authoritative example it will be necessary to cite one in which the people resisted a like bequest by their sovereign, and were generally condemned as unjust and rebellious. If Peter I, who appointed his wife to succeed him, had wished to subject the Empire to the grand duke or to some other neighboring power, can we believe that the Russians would have submitted, or that their resistance would have been looked upon as a revolt? We can not find in Europe any great State which may be regarded as alienable. If certain small principalities have been regarded as such, it was because they were not truly sovereign. They were fiefs of the Empire, possessing more or less liberty; their lords bartered the rights they

---

(*a*) *De Jure Belli et Pacis*, Bk. I, Ch. III, § XII.

had over them, but they could not withdraw them from their dependence upon the Empire.

Hence we conclude that as the Nation alone has the right to subject itself to a foreign power, the right to really alienate the State can never belong to the sovereign unless it is expressly given to him by the whole people. Likewise the right of designating a successor or of transferring the scepter to other hands is never to be presumed, and must be founded either upon express consent by a law of the State or upon long usage justified by the implied consent of the people.

§ 70. Duty of a prince who may designate his successor.

If the power of designating his successor is confided to the sovereign, he ought to make his choice only with a view to the safety and welfare of the State. That was the purpose for which he himself was appointed (§ 39); hence the right of transferring his power to other hands can only have been given him with that same object in view. It would be absurd to consider it as a right to be made use of by the Prince for his own private advantage. Peter the Great had only in view the welfare of the Empire when he left the crown to his wife. He knew that heroic woman to be the most capable person to follow out his ideas and to bring to completion the great work he had begun. Hence he chose her in preference to his son, who was as yet too young. If we often found upon the throne such enlightened minds as Peter's, a Nation could take no wiser step towards securing for itself a good government than to confide to its ruler, by a fundamental law, the power to designate his successor. This method would be much more effective than the rule of birth. Those Roman Emperors who had no male children adopted a successor—a practice to which Rome owed a line of sovereigns unique in history. Nerva, Trajan, even Hadrian, Antoninus, Marcus Aurelius—what rulers they were! Does birth often place their like upon the throne?

§ 71. Ratification, at least tacit, of the state is necessary.

We may go yet further and assert boldly that as the welfare of the whole Nation is at stake in so important a matter, the consent of the people or of the State, and their ratification, at least implied, is necessary to give full and complete effect to it. If an Emperor of Russia took it into his head to designate as his successor a subject notoriously unworthy of wearing the crown there is no reason to think that that vast Empire would submit blindly to so disastrous an appointment. And who would presume to blame a Nation for not wishing to run to its ruin out of deference to the last orders of its Prince? As soon as the people submit to the sovereign designated for them, they impliedly ratify the choice of their last Prince, and the new monarch enters upon all the rights of his predecessor.

CHAPTER VI.

Principal Objects of a Good Government. First, to Provide for the Needs of the Nation.

§ 72. The aim of civil society determines the duties of the sovereign; first, he ought to procure plenty.

After these remarks upon the constitution of a State we come now to the principal objects of a good government. We have seen above (§§ 41, 42) that once the Prince is invested with the sovereign authority he takes upon himself the duties of the Nation in respect to the government. Hence in treating of the principal objects of a wise administration we shall exhibit at the same time the duties of a Nation towards itself and those of the sovereign towards his people.

A wise ruler of the State will find his duties marked out in a general way by the ends of civil society. Society is established in order to procure for its members the necessities, the comforts, and even the pleasures of life, and in general, all that is necessary to their happiness; and in order to secure to each individual the peaceful enjoyment of his property and a sure means of obtaining justice; and finally, in order to defend the entire body against all violence from without (§ 15). The Nation or its ruler will therefore give its first attention to providing for the needs of the people, to creating on all sides a happy abundance of the necessities of life, and even of the comforts and innocent and laudable pleasures. Apart from the fact that a comfortable, I do not mean luxurious, life adds to men's happiness, it enables them to work with greater care and success for their own advancement, which is their chief and most important duty, and one of the objects which they ought to have in view when they unite in society.

§ 73. And to take care that there be a sufficient number of workmen.

In order to succeed in procuring this abundance of all things, one must see to it that there be a sufficient number of skillful workmen in every useful or necessary profession. This result will be produced by the careful attention of the government, by wise regulations, and by assistance at the proper time, without the use of compulsion, which is always hurtful to industry.

§ 74. And to prevent the emigration of useful workmen.

Workmen who are useful to the State should be kept in it; and the public authority surely has the right to use force, if need be, for that purpose. Every citizen owes his services to his country; an artisan in particular, who has been brought up, educated, and instructed in the bosom of the State, may not lawfully leave it and carry abroad an industry which he learned at home, unless his country has first no need of him or unless he can not receive there the just reward of his labor and his talents. An occupation must therefore be procured for him. But if, while he is able to make an honest profit in his own country, he should wish to abandon it without reason, his country has the right to detain him. But it should use this right with moderation, and only in important cases, or from necessity. Liberty is the soul of genius and industry; frequently a workman or an artisan, after many travels, is drawn home to his own country by natural affection, and returns more skillful and better able to be of service to it. With the exception of certain special cases the better course in this matter is to use only gentle means, protection, encouragement, etc., and to leave the rest to that natural love which every man has for the place of his birth.

§ 75. Agents who entice workmen away.

As for those agents who come to a country in order to entice away its useful subjects, the sovereign has the right to punish them severely, and he has a just subject of complaint against the Power which employs them.

We shall discuss elsewhere more in detail the general question whether a citizen may leave the society of which he is a member. The special reasons in the case of useful workmen are sufficient here.

§ 76. Labor and industry should be encouraged.

The State ought to encourage labor, to stimulate industry, and to incite talent; it should offer rewards, honors, and privileges; and it should enable every man to live by his work. Here, again, England may serve as an example. Parliament watches unceasingly over these important matters and spares neither care nor expense. Do we not even see a society of benevolent citizens formed with this object in view and devoting considerable sums to it? It distributes in Ireland prizes to workmen who are the most distinguished in their profession. It gives assistance to immigrants from foreign countries and to those who have not the means to set up for themselves. Can such a State fail to be both powerful and prosperous?

CHAPTER VII.

The Cultivation of the Soil.

Of all the arts, tillage or agriculture is without doubt the most useful and the most necessary. It is the chief source from which the State is nourished. The cultivation of the soil increases greatly its produce; it constitutes the surest resource and the most substantial fund of wealth and commerce for every people possessing a favorable climate. **§ 77. Usefulness of agriculture.**

This object deserves the most careful attention of the government. The sovereign should do all in his power to have the lands under his control as well cultivated as possible. He must not permit either communities or private persons to acquire great tracts of land which will be left uncultivated. Those rights of *common* which deprive an owner of the free use of his lands and prevent him from inclosing and cultivating them to best advantage, those rights, I repeat, are contrary to the welfare of the State and ought to be suppressed, or restricted within just limits. The right of private ownership on the part of the citizens does not deprive the Nation of the right to take effective measures to make the entire country produce as large and advantageous returns as possible. **§ 78. Proper measures to be taken in this matter; the distribution of lands.**

The government ought carefully to avoid whatever may discourage the husbandman or divert him from his labor. Those excessive and ill-proportioned taxes the burden of which falls almost entirely upon the agricultural class, and the annoyances caused by the commissioners who collect them, take from the unfortunate peasant the means of tilling the soil and depopulate the country districts. Spain is the most fertile country of Europe and the least cultivated. The Church possesses too much land; and the contractors for the royal supplies, being authorized to purchase at a low price whatever grain a peasant has beyond what is needed for his own subsistence, discourage him so greatly that he only sows the precise quantity of grain needed for himself and his family. Hence those frequent times of scarcity in a country which might supply its neighbors. **§ 79. The protection of husbandmen.**

Another abuse also hurtful to agriculture is the contempt shown for the farming classes. The tradesmen in the towns, the idle citizens, and even the most servile artisans look upon the farmer with a disdainful eye; they humiliate and dishearten him. They presume to despise an occupation which feeds the human race and is man's natural employment. A tailor, or an insignificant shopkeeper, puts far beneath him an occupation which endeared itself to the early Consuls and Dictators of Rome. China has wisely prevented this abuse. Agriculture is held in honor there, and in order to keep up the proper attitude towards it, every year, on a solemn feast-day, the Emperor himself, followed by his whole Court, puts his hand to the plough and sows a small piece of land. Hence China is the best cultivated land in the world, and it feeds a countless number of inhabitants, who at first sight would seem to the traveler too numerous for the space they occupy. **§ 80. Agriculture should be held in esteem.**

The cultivation of the soil not only deserves the attention of a government because of its great utility, but it is in addition an obligation imposed upon man by nature. The whole earth is destined to furnish sustenance for its inhabitants; but it can not do this unless it be cultivated. Every Nation is therefore bound by the natural law to cultivate the land which has fallen to its share, and it has no **§ 81. Natural obligation to cultivate the soil.**

right to extend its boundaries or to obtain help from other Nations except in so far as the land it inhabits can not supply its needs. Those peoples, such as the ancient Germans and certain modern Tartars, who, though dwelling in fertile countries, disdain the cultivation of the soil and prefer to live by plunder, fail in their duty to themselves, injure their neighbors, and deserve to be exterminated like wild beasts of prey. There are others who, in order to avoid labor, seek to live upon their flocks and the fruits of the chase. This might well enough be done in the first age of the world, when the earth produced more than enough, without cultivation, for the small number of its inhabitants. But now that the human race has multiplied so greatly, it could not subsist if every people wished to live after that fashion. Those who still pursue this idle mode of life occupy more land than they would have need of under a system of honest labor, and they may not complain if other more industrious Nations, too confined at home, should come and occupy part of their lands. Thus, while the conquest of the civilized Empires of Peru and Mexico was a notorious usurpation, the establishment of various colonies upon the continent of North America might, if done within just limits, have been entirely lawful. The peoples of those vast tracts of land rather roamed over them than inhabited them.

§ 82. Public granaries. The establishment of public granaries is an excellent measure for the prevention of famine. But care must be taken not to manage them in a commercial spirit, with a view to profit by them. That would be to create a monopoly, which would be none the less unlawful because held by an officer of the government. These granaries are filled in times of great abundance and store the grain that would otherwise remain on the farmer's hands or be shipped abroad in too great quantities. They are opened when grain grows dear, and thus keep it at a just price. If, in times of plenty, they prevent that necessary commodity from easily falling to a very low price, this inconvenience is more than made up for by the relief which they bring in times of scarcity; or rather there is no inconvenience at all. When grain is sold very cheap, the workman is tempted, for the sake of underselling others, to put his wares at a price which he will later on be obliged to raise and thereby upset commerce; or he will accustom himself to an ease which he can not continue in harder times. It would be of advantage to manufactures and to commerce if the living expenses of workmen could be kept moderate and at all times about the same. Finally, public granaries keep in the State grain which would otherwise be shipped out at a low price, and which would have to be brought back at great expense in years of scarcity. This would be a real loss to the Nation. Moreover, these granaries are no hindrance upon commerce in grain. If the country produces in successive years more than is necessary to support its inhabitants, the excess will not be kept from being sent abroad, but it will go at a higher and fairer price.

CHAPTER VIII.

Commerce.

It is commerce that enables individuals and Nations to procure for themselves things which they stand in need of and can not find at home. It has two divisions—home trade and foreign trade. The former takes place within the State between the citizens themselves, the latter is carried on with foreign Nations. **§ 83. Home trade and foreign trade.**

The home trade of a Nation is of great advantage to it; it enables all the citizens to satisfy their wants, whether these relate to their necessities, their conveniences, or their pleasures. It causes money to circulate, stimulates industry, encourages labor, and by giving a means of livelihood to a large number of citizens, it helps to increase the population of the country and to strengthen its power. **§ 84. Advantages of home trade.**

The advantages of foreign trade can be shown from the same reasons, and in addition to the advantages of home trade these two can be found: Firstly, by its trade with foreigners, a Nation obtains for itself those things which nature or art do not produce in its own country; secondly, if this commerce is well directed it increases the riches of a Nation and can become a source of wealth and plenty. The example of Carthage in ancient times, and that of the English and the Dutch in modern times, afford the clearest proof of this. Carthage offset by its wealth the success, the bravery, and the glory of Rome. Holland has heaped up immense wealth in her marshes; a company of her merchants possesses whole kingdoms in the East, and the governor of Batavia holds command over the Kings of India. To what a degree of power and honor has not England arrived! In former times her warlike Kings and people made brilliant conquests, which they afterwards lost by the uncertain chance of war; to-day it is principally by her commerce that she holds in her hand the balance of power in Europe. **§ 85. Advantages of foreign trade.**

Nations are obliged to develop home trade, firstly, because it can be proved from the Law of Nature that men should mutually assist one another, and contribute as far as they can to the advancement and prosperity of their fellow men. Hence after the introduction of private property there arises the obligation to turn over to others, at a fair price, things they need and for which the owner has no personal use; secondly, since civil society was established for the purpose of enabling each one to procure the things necessary for his advancement and welfare, and since home trade is the means of obtaining all those things, the obligation to develop it is derived from the very compact of civil society; lastly, as a Nation is helped by its commerce, it owes to itself the duty of making it flourish. **§ 86. Obligation to develop home trade.**

For a like reason drawn from the good of the State, and also for the purpose of obtaining for the citizens whatever they stand in need of, a Nation is obliged to carry on and to assist foreign trade. Of all modern States England has distinguished itself most in this respect. Parliament continually watches over this important object; it effectually protects the navigation of its merchants, and it encourages by considerable bounties the exportation of superfluous commodities and manufactures. There is a very good treatise (*a*) which shows the valuable advantages which England has derived from so wise a policy. **§ 87. Obligation to develop foreign trade.**

(*a*) Remarks upon the Advantages and Disadvantages of France and Great Britain with respect to Commerce.

§ 88. Foundation of the right to trade. Right to purchase.

Let us now see what are the Laws of Nature and what are the rights of Nations in respect to their commerce with one another. Men are obliged mutually to assist one another as far as they can, and to contribute to the advancement and welfare of their fellow men (Introd., § 10); hence it follows, as we have just said (§ 86), that after the introduction of private property there arises the duty of selling to one another, at a just price, those things of which the owner has no personal need and which are necessary to others; for by no other means can an individual procure what is necessary for him, or useful, or what is adapted to making life pleasant and agreeable. Now since rights arise from obligations (Introd., § 3), the obligation we have just established gives to every man the right to obtain for himself the things he has need of, by purchasing them at a fair price from those who have no personal need of them.

We have likewise seen (Introd., § 5) that men, by uniting in civil society, could not free themselves from the authority of the Laws of Nature, and that the entire Nation, as a Nation, remains subject to the same laws, so that the natural and necessary Law of Nations is nothing else than the Law of Nature suitably applied to Nations or sovereign States (Introd., § 6); from which it follows that a Nation has the right to obtain at a fair price the things it has need of by purchasing them from Nations which have no use for them for themselves. This is the foundation of the rights of commerce between Nations, and especially of the right to purchase.

§ 89. Right to sell.

The same reasoning can not be applied to the right to sell the things we would like to part with. Men and Nations are perfectly free to buy or not buy a thing which is for sale, or to buy it from one person rather than from another. No man has any right from the natural law to sell what belongs to him to one who does not wish to buy, nor has any Nation the right to sell its commodities or manufactures to a Nation which is unwilling to take them.

§ 90. Exclusion of foreign goods.

Consequently every State has the right to forbid the importation of foreign goods; and the Nation which is thus prohibited has no right to complain, as if it had been refused an office of humanity. The complaint would be ridiculous, since the only object of the sellers would be profit, and the Nation which lays the prohibition is not willing that another should profit at its expense. It is true, however, that if a Nation were quite certain that the prohibition of its goods by another State was not due to any reason connected with the welfare of that State, it would have cause to regard that conduct as an unfriendly act, and could make complaint on that point. But it would be very difficult for it to make sure that the other State had no sound or apparent reason for making the prohibition.

§ 91. Nature of the right to buy.

From the manner in which we have proved the right which a Nation has to buy from others what it needs, it is easy to see that this right is not one of those which are called *perfect* and which are accompanied with the right to use compulsion. We will develop more clearly the nature of a right which may give room for serious disputes. You have the right to buy from others things which you need and which they do not require for themselves; you come to me; I am not obliged to sell them to you if I have need of them myself. By reason of the natural liberty which belongs to all men, it is for me to judge whether I have need of them or if I am in a position to sell them to you; and it is not for you to decide whether I have judged rightly or not; since you have no authority over me. If I, improperly and without good reason, refuse to sell you what you have need of at a fair price, I violate my duty; you may make complaint, but you must put up with it, and you can not undertake to force me without attacking my natural liberty and doing me an injury. Hence the right to buy the things one has need of is only an *imperfect* right, like that of a poor man to receive alms from a rich man; if the latter refuse to give them, the poor man has reason to complain, but he has not the right to take them by force.

If it be asked what a Nation would have the right to do in a case of extreme necessity, we must defer the question to its place in the following Book (Chap. IX).

§ 92. It is for each nation to decide how far it will engage in commerce.

A Nation, then, has no natural right to sell its goods to another Nation which does not wish to buy them; it has only an imperfect right to buy from others what it has need of, and it is for these others to decide whether they are in a position to sell or not; and finally, commerce consists in the reciprocal purchase and sale of all sorts of commodities. Hence it is clear that it is for each Nation to decide whether it will carry on commerce with another or not. If it wishes to allow commerce with a certain Nation, it has the right to impose such conditions as it shall think fit; for in permitting another Nation to trade, it grants the other a right, and every one is at liberty to attach such conditions as he pleases to his voluntary concessions.

§ 93. How a perfect right to foreign trade may be acquired.

Men and sovereign States may, by their promise, bind themselves by a perfect obligation to do things in respect to which nature only imposes an imperfect obligation. As a Nation has not by nature a perfect right to carry on commerce with another, it may obtain such a right by an agreement or a treaty. Hence this right is only acquired by treaties and belongs to that division of the Law of Nations called *conventional* (Introd., § 24). The treaty which gives a right to commerce is the measure and the rule of that right.

§ 94. Mere permission to trade.

A mere permission to trade with another country does not carry with it a perfect right to that trade; for if I give you permission simply and purely to do a certain thing, I give you no right to do it at a later time against my wishes. You may make use of my concession as long as it lasts, but there is nothing to prevent me from changing my mind. Since, then, it is for every Nation to decide whether it wishes to carry on commerce with another, and on what conditions it wishes to do so (§ 92), if a Nation has allowed another Nation for some time to come to trade in the country, it still remains free to forbid such commerce whenever it pleases, or to restrict it, or to subject it to certain regulations; and the Nation to which the permission was originally given may not complain that an injustice is done it.

We merely remark that Nations, like individuals, are obliged to trade with one another for the common advantage of the human race, because of the need men have of one another's assistance (Introd., §§ 10, 11, and Bk. I, § 88); but that does not prevent each one from being free to consider, in individual cases, whether it is well for it to promote or to allow commerce; and as the duties of a Nation towards itself are more important than those towards others, if under certain circumstances a Nation should come to regard foreign trade as dangerous to the State, it may give it up and prohibit it. This the Chinese have done for many years. But we must add that there must be grave and important reasons why a Nation's duties towards itself should demand such a withdrawal; otherwise it may not refuse to comply with the general duties of humanity.

§ 95. Whether rights of commerce are subject to prescription.

We have seen what are the rights with respect to commerce which Nations have by nature, and what others they may procure by means of treaties. Let us see whether any rights can be based upon long usage. To settle this question on a sound basis we must first note that there are rights which consist in a simple *power* to do a thing; the Latin term is, *jura meræ facultatis*, rights unqualified as to their exercise. They are of such a nature that the possessor of them may use or not use them as he thinks fit, being absolutely free from any constraint in that respect;

so that acts done in the exercise of these rights are acts of mere free will, which one may or may not do at his good pleasure. It is clear that rights of this character may not be lost by prescription because of non-user; because prescription is only founded on a consent lawfully presumed. If I possess a right of such a nature that I may use or not use it as I think best without taking commands from anyone, no one may presume from the fact that I have not used my right for a long time that it was my intention to give it up. This right is therefore not subject to prescription unless I have been forbidden or hindered in the use of it and I have obeyed with sufficient signs of consent. Let us suppose, for example, that I am free to grind my corn at any mill that suits me, and that for a considerable time, a generation if you like, I have made use of the same mill; since I have done in the matter as I thought best, no one may presume from my long use of the same mill that I meant to deprive myself of the right to grind at any other. Hence my right can not be lost by prescription. But suppose, now, that when I decided to make use of another mill the owner of the former opposes the change and makes me understand that he prohibits it; if I obey the prohibition, without necessity and without any resistance to it, although I could have defended myself and was aware of my right, the right is lost, because by my conduct I gave a lawful ground of presumption that I meant to abandon it. Let us apply these principles. Since it depends on the willingness of each Nation to trade or not to trade with another, and to regulate the manner in which it wishes to trade (§ 92), a right over commerce is evidently a right to be exercised at will (*jus meræ facultatis*), a power without qualification, and which is therefore not subject to prescription. Thus, although two Nations may have traded together without interruption for a century, this long practice does not confer any right upon either of them, and neither is obliged for that reason to allow the other to come and sell its wares. Both retain the twofold right of prohibiting the import of foreign goods, and of selling theirs wherever they are wanted. Because the English have been in the habit from time immemorial of obtaining their wines from Portugal, they are not for that reason bound to continue the trade, and have not lost the right of buying their wines elsewhere. Because they have sold for a very long time their cloth in Portugal they are none the less able to sell it elsewhere; and reciprocally, the Portuguese are not bound, because of long usage, either to sell wines to the English or to buy their cloth. If a Nation desires any right of commerce which shall no longer depend on the good pleasure of another, it must obtain that right by a treaty.

§ 96. Rights founded upon treaties can not be lost by prescription.

What we have just said may be applied to rights of commerce acquired by treaties. If a Nation has obtained in this way a right to sell certain wares to another, it does not lose its right, although it should allow a great number of years to pass without making use of the right; for this right is a power without qualification (*jus meræ facultatis*), which it may use or not use as it pleases.

Nevertheless, certain circumstances might alter the conclusion just stated, because they might change implicitly the nature of the right in question. For example, if it were clear that the Nation which granted the right only did so for the purpose of obtaining a certain kind of goods which it had need of, and if the Nation which has obtained the right to sell the goods should neglect to furnish them and another Nation should offer to deliver them regularly on condition of having an exclusive privilege, it seems certain that this privilege could be granted. The Nation which formerly had the right to sell would thus lose it by not having fulfilled the implied condition.

§ 97. Monopolies, and companies possessing exclusive privileges.

Commerce is for the common benefit of the Nation; all of the citizens have an equal right to take part in it. Hence *monopolies* are in general contrary to the rights of the citizens. However, there are exceptions to this rule based upon the very welfare of the State, and a wise government may in certain cases justly establish a monopoly. There are certain commercial enterprises which can only be undertaken in a large way and with considerable capital, and which are beyond the capacity of individuals. There are others which would soon prove disastrous were they not conducted with much prudence, with a uniform policy, and after fixed principles and rules. These branches of trade can not be undertaken indiscriminately by individuals; hence companies are formed under the authority of the government, and as these companies could not succeed without exclusive privileges, it is beneficial to the Nation to grant them. In this way there have arisen in different countries those powerful companies which carry on commerce with the East. When the subjects of the United Provinces established themselves in the Indies after the overthrow of their enemies the Portuguese, individual merchants would not have dared to attempt so difficult an undertaking, and the State itself, being occupied with the defense of its liberty against the Spaniards, had not the means to attempt it.

It is also certain that when a branch of commerce or an industry is beyond the power of a Nation, if an individual should offer to carry it on upon condition of being granted an exclusive privilege, the sovereign has the right to grant it.

But whenever commerce can be left free to the whole Nation, without being harmful or less advantageous to the State, a grant of exclusive rights to certain privileged citizens is a violation of the rights of the others; and even when this commerce calls for considerable expenditures to maintain forts, warships, etc., the State may undertake them in common interest of the Nation and leave the profits of the trade to merchants for the encouragement of industries. This is what is sometimes done in England.

§ 98. Balance of trade; attention of the government to this matter.

The ruler of a Nation ought to be carefully on the watch to encourage such trade as is beneficial to the people and to suppress or restrict what is hurtful. As gold and silver have become the common standard of value for all commercial goods, that trade which brings into the State a greater quantity of these metals than goes out of the State is a beneficial trade; and on the other hand, a trade which carries out of the country more gold and silver than it brings in is ruinous. This is what is called the balance of trade. The skill of those who have the direction of it consists in making the balance turn in favor of the Nation.

§ 99. Import duties.

Of all the steps which a wise government may take with this object in view we shall here touch upon import duties only. When the rulers of a State wish to turn commerce into other channels without, however, forcibly controlling it, they subject the articles, which they intend to keep out of the country, to such import duties as will discourage their consumption. In this manner French wines have to pay very high duties in England, while Portuguese wines pay but light ones. This is because England sells few of its products to France, while it ships them in quantities to Portugal. Such policy is perfectly wise and just, and France can not complain; for every Nation may decide upon what conditions it will receive foreign goods, and may even refuse to receive them at all.

CHAPTER IX.

The Care of Public Roads, and Rights of Toll.

§ 100. Usefulness of highways, canals, etc.

The usefulness of highways, bridges, canals, and, in a word, of every safe and convenient means of communication, can not be questioned. They facilitate trade from one place to another, and make the carriage of goods less costly, as well as safer and easier. Merchants find themselves able to sell at better prices and to overcome competition; foreigners are led to import their wares, which are distributed throughout the country and diffuse wealth wherever they go. France and Holland enjoy a daily experience of this.

§ 101. Duties of the government in this respect.

Hence, one of the principal duties of the Government, in the interest of the public welfare and of commerce in particular, will relate to its highways, canals, etc. Every endeavor should be made to render them both safe and convenient. France has distinguished itself among the Nations for the care and magnificence with which it has discharged this duty. Numerous patrolmen watch everywhere over the safety of travelers, while magnificent highways, bridges, and canals give easy communication between one province and another. Louis XIV has united the two seas by a work worthy of the Romans.

§ 102. Its rights in this matter.

The whole Nation ought without doubt to contribute to such useful undertakings. When, therefore, the construction and the repair of highways, bridges, and canals would be too heavy a burden upon the ordinary revenues of the State, the Government may compel the people to labor at them or to contribute to the expense. The peasants in certain provinces of France have been heard to complain of the work imposed upon them for the construction of highways; but they have not been slow to thank the authors of the undertaking as soon as experience opened their eyes to their real interests.

§ 103. Foundation of the right of toll.

The construction and the maintenance of all these works demand large expenditures, and therefore a Nation may with perfect right force all those who make use of them to contribute to them. This is the lawful source of the right of toll. It is fair that a traveler, and especially a merchant, who profits by a canal, a bridge, or a highway in prosecuting his journey or in conveying his wares more easily, should help to pay the expenses of these useful works by a moderate contribution; and if a State thinks it well to exempt its own citizens, it is not bound to extend the exemption to foreigners.

§ 104. Abuse of this right.

But this right, which is entirely lawful in its origin, has been made a pretense for great abuses. There are countries where no care is taken of the highways of travel, and yet considerable tolls are still exacted. A lord who possesses a strip of land bordering upon a river demands a toll, although he does not go to a penny's expense in keeping the river navigable. This is clear extortion and contrary to the natural Law of Nations; for the partitioning of lands brought about by private ownership can not take away from anyone the right of passage over them when no harm whatever is done to the owner. That is a right which every man has by nature and which he can not justly be made to pay for.

But the arbitrary Law of Nations, or *the custom* of Nations, at present tolerates the abuse so long as it is not carried to such an excess as to destroy commerce. However, it is only rights supported by ancient custom which are submitted to without objection; the imposition of new tolls is often a source of dispute. In former times the Swiss went to war with the Dukes of Milan because of exactions of that nature. The right of toll is still a subject of abuse when those who use the highway are required to pay far beyond their proportion of the expenses of maintaining the highway. To avoid any oppression or difficulty, Nations now settle the matter by means of treaties.

CHAPTER X.

Money and Exchange.

In the early days, after the introduction of private property, men exchanged their superfluous commodities and possessions for others which they had need of. Afterwards gold and silver became the common measure of the price of all goods; and in order that people might not be deceived the idea was conceived of stamping upon pieces of gold and of silver, by the authority of the State, the image of the Prince or some other design, which would be the seal and the guarantee of their value. This practice is widely in use and is of inestimable convenience. It is easy to see how much it facilitates commerce. Nations or their rulers can not give too much attention to so important a matter.

§ 105. Introduction of money.

Since the imprint put upon money is to be the guarantee of the standard of its weight and fineness, it is clear from the start that everyone can not be allowed indiscriminately to coin it. Frauds would become so common that public confidence in the value of money would soon be lost and the usefulness of money would be at an end. Money is coined by the authority and in the name of the State or of the Prince who is surety for it. He should therefore be careful to coin a sufficient quantity of it for the needs of the country and should see that it be good money, that is, that its intrinsic value be proportionate to its extrinsic or face value.

§ 106. Duties of a nation or prince on the subject of money.

It is true that under urgent necessity the State would have the right to order its citizens to take money at a price higher than its real value. But as foreigners will not take it at that price, the Nation gains nothing by this expedient; the evil is glossed over for a time, but not removed. This excess of value arbitrarily added to money constitutes a real debt on the part of the sovereign to the individual citizens, and if perfect justice is to be done, all such money, when the crisis is past, should be bought back at the expense of the State and paid for in other specie of standard value; otherwise this kind of tax, imposed in a time of necessity, would unjustly fall upon those only who received the depreciated coin. Besides, experience has shown that expedients of this kind are hurtful to commerce, inasmuch as they destroy the confidence of foreigners and of the citizens, raise proportionately the price of goods, and by inducing people to lock up or to send abroad the older good specie, suspend the circulation of money. Hence it is the duty of every Nation and of every sovereign to hold back, as far as possible, from so dangerous a policy, and to have recourse rather to taxes and to extraordinary contributions for the relief of pressing needs of the State.

§ 107. Their rights in this matter.

Since the State is the guarantor of the soundness of the money in circulation, it belongs to the public authority alone to coin it. Those who counterfeit it violate the rights of the sovereign, whether they make it after the same standard of value or not. They are called *counterfeiters*, and the crime they commit is reasonably regarded as a serious one; for if they use alloy in their coin they rob both the public and the Prince, and if they make good coin they usurp the right of the sovereign. They are not apt to make good coin unless there be a profit from coining it, in which case they rob the State of a gain which belongs to it. In any case they do an injury to the sovereign; for since the public faith guarantees the money, the sovereign alone should have the right to coin it. Hence the right of coining money is put among the *royal prerogatives*, and Bodin(*a*) relates that when Sigismond Augustus, King of Poland, granted the privilege to the Duke of Prussia in 1543, the estates of the realm passed a decree in which was inserted the statement that the King could not grant that privilege, since it was inseparably connected with the crown. The same author observes that although formerly several lords and bishops of France had the privilege of coining money, they were always regarded as acting under the authority of the King, who finally withdrew all those privileges because of abuses.

§ 108. Wrongs which one nation may do to another on the subject of coin.

From the principles we have just laid down it is easy to draw the conclusion that if one Nation counterfeits the money of another, or if it permits counterfeiters to do so, and protects them, it does a wrong to that Nation. But ordinarily criminals of this class find refuge nowhere, all princes being equally interested in exterminating them.

§ 109. Exchange, and the laws of commerce.

There is another custom of more recent date and of no less advantage to commerce than the use of money. It consists in *exchange*, or the business of banking, by means of which a merchant can remit from one end of the world to another immense sums of money almost without expense and, if he wishes, without risk. For the same reasons that sovereigns ought to protect commerce, they are obliged to maintain this custom by good laws which shall secure the interests of all merchants, whether foreigners or citizens. In general, it is equally the interest and the duty of every Nation to establish wise and just commercial laws.

(*a*) De la République, Liv. 1, Ch. x.

CHAPTER XI.

Second Object of a Good Government—to Procure the True Happiness of the Nation.

§ 110. A nation ought to work for its own happiness.

Let us continue our exposition of the principal objects of a good government. What we have said in the five preceding chapters has reference to the duty of providing for the needs of the people and of satisfying them abundantly. That is a matter of necessity, but it is not enough for the happiness of a Nation. Experience shows us that a people may be unhappy in the midst of all earthly goods and in the lap of wealth. All that can enable men to enjoy true and permanent happiness constitutes a second object meriting the most serious attention of the government. Happiness is the goal towards which are directed all the duties which individuals and peoples owe to themselves; it is the great end of the natural law. The desire to be happy is the powerful incentive which rouses men to action; happiness is the end whither they all tend and it ought to be the prime object of the public will (Introd., § 5). It is therefore the duty of the individuals who form this public will, or of the rulers who represent it, to work for the happiness of the Nation, to watch over it unceasingly, and to promote it to the utmost of their power.

§ 111. Education.

To succeed in this task it is necessary to teach the people to seek happiness where it can be found, namely, in self-development to the highest point, and to teach them the means by which it can be brought about. Hence the ruler of a State can not give too much care to the education of his people and their enlightenment, and to directing them to useful knowledge and wise discipline. Let us leave to the tyrants of the East their hatred for knowledge; they fear to have the people educated because they wish to rule over them as slaves. But while they receive abject submission, they often experience unrestrained disobedience and revolt. A wise and just ruler does not fear the light of knowledge; he knows that it is always of advantage to a good government. If enlightened people know that liberty is the natural inheritance of man, they realize better than others how necessary it is, in their own interest, that this liberty be subject to lawful authority. They are faithful subjects for the very reason that they refuse to be slaves.

§ 112. Education of youth.

First impressions have the greatest influence upon one's whole life. In the tender years of infancy and youth the seeds of good or of evil are readily implanted in the mind and heart. The education of youth is one of the most important matters deserving the attention of the government. It should not be left entirely to parents. The surest way of forming good citizens is to establish proper institutions for public education, to provide them with able teachers, to direct them wisely, and to see to it, by gentle and suitable measures, that the people do not fail to profit by them. How admirable was the education of the Romans in their flourishing ages, and how naturally adapted it was to form great men! Young men put themselves under the patronage of a famous man, frequented his house, accompanied him wherever he went, and profited by his example as well as his instructions; their sports and amusements were such as were suited to make soldiers of them. The same practice prevailed at Sparta, and was one of the wisest institutions of the wonderful Lycurgus. That philosopher and legislator went into the minutest details concerning the education of youth(*a*) under the conviction that the prosperity and glory of the Republic depended on it.

§ 113. The arts and sciences.

Who can doubt that the sovereign and the entire Nation ought to encourage the arts and the sciences? Passing over the many useful inventions which appeal to everyone, literature and the fine arts elevate the mind and refine manners, while if the study of them does not always inspire the love of virtue, it is due to the fact that unfortunately we meet at times, and too often, with hearts hopelessly depraved. Nations and their rulers ought, therefore, to protect learned men and great artists, and to stimulate their talents by the offer of honors and rewards. Let the friends of barbarism declaim against the sciences and the fine arts! We will not stoop to answer their shallow reasoning, but content ourselves with appealing to experience. Let us compare England, France, Holland, several towns of Switzerland and of Germany, with the many countries buried in ignorance, and let us see where the most upright men and the best citizens can be found. It would be a gross error to cite against us the example of Sparta and of ancient Rome. It is true that they did not indulge in curious speculations or in those branches of knowledge and of art whose object is mere pleasure; but they cultivated, and especially at Rome, the deeper and more practical sciences, morality, jurisprudence, politics, and war with greater care than we bestow upon them.

The usefulness of literature and the fine arts, and the necessity of encouraging them, are quite generally recognized to-day. The immortal Peter I believed that he could not fully civilize Russia and make the country prosperous without their help. In England knowledge and ability lead to honors and wealth. Newton was honored, patronized, and rewarded during his life, and after his death buried beside the tombs of kings. France also deserves special praise in this matter; it owes to the munificence of its Kings several institutions no less useful than renowned. The Royal Academy of Sciences diffuses everywhere the light of knowledge and the desire for learning. Louis XV has given it the means of sending to seek at the equator and the polar circle for the proof of an important truth. We *know* now what formerly we *believed* on the faith of Newton's calculations. Happy that Kingdom in which the taste of the day, too widely prevalent, does not lead it to neglect the more important branches of knowledge for those whose object is mere pleasure, and where those who fear its light do not succeed in stamping out the spark of knowledge.

§ 114. The liberty of philosophical discussion.

I speak of the liberty of philosophical discussion. It is the vital spirit of the republic of letters. What can genius accomplish if it is held in check by fear? Can the greatest of men enlighten his fellow-citizens if he finds himself a continual object of attack by ignorant bigoted quibblers, and if he is obliged to be continually on his guard to avoid being accused by cavillers of indirectly offending received opinions? I know that this liberty has its proper limits; that a wise administration ought to watch over the press and not allow the publication of scandalous works which attack morality, the government, or the religion established by law. But great care must also be taken not to suppress knowledge, from which the State can receive the most valuable assistance. Few people know how to keep a just mean, and the office of literary censor ought to be intrusted only to men who are at once both wise and enlightened. Why seek in a book for ideas which it does not appear the author wished to express; and when a writer is treating of philosophy and confines himself to it, should evil-minded opponents be heard when they wish to put him in

---

(*a*) See Xenophon, The Spartan Republic.

conflict with religion? Far from disturbing a philosopher in his opinions, public officials ought to punish those who accuse him publicly of irreverence, when his writings show respect for the religion of the State. The Romans appear to have been created to give an example to the world; they wisely maintained with care the worship and religious ceremonies established by law, and left an open field to the speculation of philosophers. Cicero, though senator, consul, and augur, ridicules superstition, attacking it and overthrowing it in his philosophical writings. In so doing he believed that he was benefiting both himself and his fellow-citizens. But he observes "that to destroy superstition is not to overthrow religion; for it is the part of a wise man to respect the institutions and religious ceremonies of his ancestors; and we are forced to believe from the beauty of the world and the order of the celestial bodies that there is an eternal and all-perfect Being capable of being known by, and deserving the reverence of the human race." (*a*) And in his dialogues on the Nature of the Gods he introduces the academician Cotta, who was high-priest, as attacking freely the doctrines of the Stoics, but declaring that he will always be ready to defend the established religion, from which he saw that the Republic had derived great advantage, and which neither the learned nor the ignorant could lead him to abandon. On this point he says to his opponent: "That is what I think, both as pontiff and as Cotta. Do you now make me understand your view. For I ought to get from you, as a philosopher, a reason for my belief; otherwise I ought to follow our ancestors even in the absence of reasons."(*b*)

We find these examples and authorities supported by experience. Never has a philosopher troubled the State, or religion, by his opinions. They would not create any disturbance among the people nor scandalize the weak if malice or an imprudent zeal did not endeavor to discover the pretended poison. It is he who tries to set the opinions of a great man in opposition to the doctrine and worship established by law that disturbs the State and puts religion in peril.

§ 115. Love of virtue and abhorrence of vice ought to be taught.

It is not enough to educate the Nation in knowledge; in order to lead it to happiness it is even more necessary to inspire a love of virtue and an abhorrence of vice. Those who have thoroughly investigated the subject of morality are convinced that virtue is the true and only path that leads to happiness, so that its principles are nothing else than the art of living happily. One would have to be very ignorant of political affairs not to perceive how much more capable a virtuous Nation is of forming a happy, peaceful, flourishing, and secure State, respected by its neighbors and formidable to its enemies. Self-interest, therefore, in addition to his duty and the dictates of his conscience, should lead a prince to watch attentively over so important a matter. Let him employ all his authority to increase virtue and to suppress vice; let him establish the public institutions with that object in view, and direct to it the example of his own conduct and the distribution of favors, employments, and dignities. Let him extend his attention even to the private life of the citizens, and let him banish from the State whatever is suited only to corrupt

---

(*a*) "Nam, ut vere loquamur, superstitio fusa per gentes, oppressit omnium fere animos, atque hominum imbecillitatem occupavit . . . . multum enim et nobismet ipsis, et nostris profuturi videbamur, si eam funditus sustulissemus. Nec vero (id enim diligenter intelligi volo) superstitione tollenda religio tollitur. Nam et majorum instituta tueri, sacris ceremoniisque retinendis, sapientis est: et esse præstantem aliquam æternamque naturam, et eam suspiciendam, admirandamque hominum generi, pulchritudo mundi, ordoque rerum cœlestium cogit confiteri." (De Divinatione, Lib. II.)

(*b*) "Harum ego religionum nullam unquam contemnendam putavi: mihique ita persuasi, Romulum auspiciis Numam sacris constitutis fundamenta jecisse nostræ civitatis: quæ nunquam profecto sine summa placatione Deorum immortalium tanta esse potuisset. Habes, Balbe, quid Cotta, quid pontifex sentiat. Fac nunc ergo intelligam, quid tu sentias: a te enim philosopho rationem accipere debeo religionis; majoribus autem nostris, etiam nulla ratione reddita, credere." (De Natura Deorum, Lib. III.) I make use of the translation of Abbé d'Olivet.

morals. It belongs to a treatise on statesmanship to teach him in detail what are the means for attaining this desirable end and to show him those which he ought to prefer and those which he ought to avoid because of dangers accompanying their use and of abuses which may creep in. We only make the general remark here that vice may be suppressed by punishments, but that gentle means are alone capable of raising men to the practice of virtue; you may inspire men to it, but you can not force them.

§ 116. A nation will discover therein the policy of those who govern.

It is unquestionably true that the virtues of the citizens constitute the best dispositions a just and wise government could desire. Here, then, is a certain indication by which a Nation may discover the policy of those who govern. If they endeavor to make the nobility and the common people virtuous; their aim is upright and sincere; you may be assured that their sole object is the great end of government, the happiness and the glory of the Nation. But if they corrupt morals, if they spread a desire for luxury, or effeminacy, or an ardor for licentious pleasures, if they induce the nobility to a ruinous display of pomp; beware, O people, of such corruptors! Their object is to purchase slaves that they may rule despotically over them.

However little self-restraint a prince may possess, he will never have recourse to such shameful methods. Satisfied with his supreme rank and with the power which the laws give him, he proposes to reign honorably and securely; he loves his people and desires their happiness. But his ministers ordinarily can bear with no resistance nor the least opposition; if he relinquishes his authority to them, they become more proud and unbending than their master; they have not the same love for the people that he has. Let the Nation be corrupted, provided it be submissive! They fear the courage and firmness which are inspired by virtue, and they know that the distributor of favors rules at will over the men whose hearts are open to covetousness. Their methods are the same as those of a wretched woman engaged in the basest of all trades, who perverts the inclinations of a young victim, incites her to luxury and gluttony, fills her with voluptuousness and vanity, only to make her a more certain prey to a wealthy seductor. This base creature is sometimes punished by the State, while a minister who may be infinitely more guilty wallows in wealth and is invested with honor and authority. But posterity will do justice and will despise the corruptor of an honorable Nation.

§ 117. The state, or the sovereign authority, ought especially to develop its understanding and its will.

If those who rule endeavored to fulfill the obligations which the Law of Nature imposes upon them as individuals and as rulers they could never fall into the detestable practice we have just referred to. Thus far we have considered the obligation of a Nation to acquire knowledge and virtue, or to perfect its understanding and will, but we have considered it relatively to the individuals who compose the Nation. The obligation also falls in a special and appropriate way upon the rulers of a State. A Nation, as far as it acts in common, or as a body, is a moral person (Introd., § 2), with its own understanding and will, and no less bound than each individual to obey the Laws of Nature (Introd., § 5), and to develop its faculties (Book I, § 21). This moral person resides in those who are clothed with the public authority and who represent the entire Nation. Whether it be the common council of the Nation, or a select body, or a King, this ruler and representative of the Nation, this sovereign, of whatever kind, is therefore indispensably bound to obtain for himself all the knowledge and all the necessary information to enable him to govern well, and is bound to give himself to the practice of every virtue suitable to a sovereign. And as this obligation is imposed upon him in view of the public good, he ought to use all his knowledge and his virtue for the welfare of the State, which is the aim of civil society.

§ 118. And to direct to the good of the state the knowledge and virtue of its citizens.

He ought also to direct, as far as he can, to this great end all the talents, the knowledge, and the virtues of the citizens, so that they may be helpful not only to the individuals who possess them, but also to the State. This is one of the greatest secrets of the art of ruling. If the good qualities of subjects pass beyond the narrow sphere of private virtues and become the virtues of citizens, the State will become powerful and prosperous. It was that happy characteristic which raised the Roman Republic to its greatest height of power and glory.

§ 119. Love of country.

The great secret of directing the virtues of individuals to the welfare of the State is to inspire the citizens with an ardent love for their country. It will then come about as a matter of course that each individual will endeavor to serve the State and to direct all his energy and talents to the welfare and glory of the Nation. This love of one's country is natural to all men. The good and wise Author of nature has been careful to give them a sort of instinct which binds them to the place of their birth, and they love their Nation as a thing intimately connected with them. But that natural instinct is often weakened or destroyed by unfortunate circumstances. The injustice or severity of the government too easily destroys it in the hearts of the subjects. Can self-love bind an individual to the interests of a country in which everything is done in view of a single man? On the other hand, we find every free people filled with zeal for the glory and prosperity of their country. Let us call to mind the citizens of Rome in the prosperous days of the Republic, and let us look to-day at the English and the Swiss.

§ 120. In individuals.

The love and affection of a man for the State of which he is a member is a necessary result of the wise and rational love which he owes to himself, since his own happiness is bound up with that of his country, a sentiment which should also follow from the contract which he has made with the social body. He promised to procure its welfare and safety as far as should be in his power. How, then, can he serve it zealously, faithfully, and courageously if he has no real love for it?

§ 121. In the nation or state itself, and in the sovereign.

The whole Nation as a body ought certainly to love itself and to desire its own welfare. The sentiment is so natural that a Nation can hardly fail in the obligation. But the duty relates more especially to the ruler or sovereign who represents the State and acts in its name. He ought to love it as something very dear to him, and put it before everything else; for it is the only lawful object of his care and of whatever acts he performs by virtue of the public authority. The monster who should not love his people would be no more than a detestable usurper and would merit without question to be driven from the throne. There is no Kingdom in which the statue of Codrus should not be set up before the palace of the sovereign. That noble-hearted King of Athens gave his life for his people. When his country was attacked by the Heraclidæ he consulted the oracle of Apollo, and on receiving for answer that the people whose leader should be killed would be the victors, he disguised himself and managed to be killed by one of the enemy's soldiers. Henry IV, King of France, cheerfully exposed his life for the welfare of his people. That great prince and Louis XII are illustrious models of the tender love a sovereign owes to his subjects.

§ 122. Definition of the term "fatherland."

The term "*fatherland*" seems to be well enough understood by everyone. But, as it is taken in different senses, it will not be useless to give here an exact definition. It means ordinarily the *State of which one is a member;* and it is in this sense that we have used it in the preceding paragraphs and that it is taken in the Law of Nations.

In a more restricted sense, following more closely its etymology, the term signifies the State, or more specifically the town or the place where our parents had their domicil at the time of our birth. In this sense it is properly said that one's country can not change, but remains always the same, to whatever place one betakes himself afterwards. A man should have gratitude and affection for the State to which he owes his education and of which his parents were members when he was born. But as a man may be forced for various lawful reasons to choose another country, that is, to become a member of another society, when we speak in general of duties towards one's country the term should be understood of the State of which a man is an actual member, since it is to it before all others that he owes allegiance.

§ 123. How shameful and criminal it is to injure one's country.

If every man is bound in conscience to love his country sincerely, and to procure its welfare as far as lies in his power, it is a shameful and detestable crime to do an injury to one's country. He who becomes guilty of it violates the most sacred of compacts and exhibits a base ingratitude; he disgraces himself by the blackest perfidy, since he abuses the confidence of his fellow-citizens and treats as enemies those who had reason to expect from him only his help and his services. We find traitors to their country only among men who are moved solely by base motives, who look to their own interest first, and whose hearts are incapable of any sentiment of affection for others. Therefore they are justly despised by all the world as the most infamous of all criminals.

§ 124. The glory of good citizens. Examples.

On the other hand, honor and praise are lavishly bestowed upon those generous citizens who, not content with merely fulfilling their duty to their country, devote themselves with a noble energy to its interests and are capable of making the greatest sacrifices for it. The names of Brutus, Curtius, and the two Decii will live as long as that of Rome. The Swiss will never forget Arnold von Winkelried, the hero whose noble deed would have merited to be handed down to posterity by another Livy. He truly devoted his life to his country; but it was as a captain, a fearless soldier, and not as a fanatic. When that nobleman of the canton of Unterwalden saw at the battle of Sempach that his countrymen could not break through the Austrian line, because the latter in full armor had dismounted and, forming a close battalion, presented a front of steel bristling with lances and pikes, he formed the generous design of sacrificing himself for his country. "My friends," he said to the Swiss, who were becoming disheartened, "I am going to give my life this day to win for you the victory. I do but commend to you my family; follow me, and break through the opening you shall see me make." At these words he drew them up in a formation called by the Romans *cuneus* (a wedge), and placing himself at the point of the triangle, marched to the center of the enemy, and there inclosing with his arms as many pikes as he could seize he threw himself to the ground and thus opened a way for those who followed him to penetrate through the thick battalion. The Austrian line once broken, the weight of their armor became fatal to them, and the Swiss carried off a complete victory.(*a*)

(*a*) This happened in the year 1386. The Austrian army consisted of 4,000 picked men, among whom there were numbers of princes, counts, and distinguished nobles, all in full armor. The Swiss had but 1,300 men, poorly armed. The Duke of Austria was killed, with 2,000 of his troops, in which number were 676 noblemen of the best families of Germany. (Histoire de la Confédération Helvétique, by de Watteville, vol. 1, p. 183 and foll.; Tschudi, Etterlin, Schodeler, Ræbmann.)

CHAPTER XII.

Piety and Religion.

§ 125. Piety.

Piety and religion have an essential influence on the happiness of a Nation, and because of their importance they deserve to be treated in a special chapter. There is nothing so calculated to strengthen virtue and give it the full scope which belongs to it as piety. By piety I mean a disposition of soul which leads us to refer all our actions to God, and to seek, in everything that we do, to be pleasing to the Supreme Being. This virtue is an indispensable obligation upon all men; it is the purest source of their happiness; and when united in civil society men are only the more obliged to practice it. A Nation ought, therefore, to be pious. Let rulers who have charge of public affairs seek constantly to merit the approbation of their Divine Master; whatever they do in the name of the State ought to be regulated by that high purpose. The care of instilling religious sentiments into the whole body of the people will always be one of the main objects they must have before them, and the State will thereby profit greatly. A sincere desire to merit in all one's actions the approval of an infinitely wise Being can not fail to produce excellent citizens. An enlightened piety in the people is the firmest support of lawful authority. In the heart of the sovereign it is the pledge of the people's safety and a source of confidence in the ruler. Lords of the earth, ye who recognize no superior here below, what assurance can be had of your good intentions if you are not believed to be filled with reverence for the common Father and Lord of men, and inspired with the desire of pleasing Him?

§ 126. It should be enlightened.

We have already suggested that piety should be enlightened. It is idle to propose to please God if one does not know the means to be taken. What a flood of evils may be looked for if men, urged on by so powerful a motive, come to take means equally false and disastrous. Blind devotion only creates superstition, and makes fanatics and persecutors, who are a thousand times more dangerous to society than profligates. Cruel tyrants have been known of who spoke only of the glory of God while they oppressed the people and trod under foot the most sacred laws of nature. It was from a refinement of piety that the Anabaptists of the sixteenth century refused all obedience to the powers of earth. Jacques Clement and Ravaillac, those execrable parricides, believed themselves animated by the loftiest devotion.

§ 127. Religion, interior and exterior.

Religion consists in the doctrines relating to God and the things of the life to come, and in the worship whose object is to honor the Supreme Being. As far as it exists in the heart it is a matter of conscience, in which each one should follow his own light. As far as it is exterior and publicly established, it is an affair of the State.

§ 128. Rights of individuals; liberty of conscience.

Every man is bound to endeavor to obtain correct ideas of God, to know His laws, His purpose with respect to His creatures, and the lot He has appointed to them. A man owes certainly the purest love and the deepest reverence to his Creator; and in order to keep himself in this disposition of mind and to act conformably to it, he must honor God in all his actions, and must give evidence by suitable means of the sentiments which fill his heart. This brief statement is sufficient to make it clear that a man is essentially and necessarily free in respect to the form of religion he ought to adopt. Belief is not a thing which can be commanded; and what sort of worship would that be which was enforced! Worship consists in certain actions which are performed directly with a view to honoring God; hence there can be no other worship to be rendered by each individual than that which he thinks suited to that end. Since the obligation to endeavor sincerely to know God, to serve him, and to honor him from the inmost heart is imposed upon man by Nature itself, it can not be that by his compact with society a man is relieved of that duty or deprived of the liberty which is absolutely necessary for the fulfillment of it. We conclude, therefore, that liberty of conscience is derived from the natural law and is inviolable. It is to the world's shame that a truth of this nature need be proved.

§ 129. Public establishment of religion. Duties and rights of a nation.

But great care must be taken not to extend that liberty beyond its proper limits. A citizen has merely the right not to be subject to any constraint in the matter of religion and has by no means the right of doing publicly whatever he pleases, no matter how his conduct affects society. The establishment of religion by law and its public exercise are affairs of state and are necessarily under the jurisdiction of the public authority. If all men must serve God, the whole Nation, as a Nation, is without doubt obliged to serve and honor Him (Introd., § 5). And as a Nation ought to perform this duty in the manner which seems best to it, it belongs to it to determine the form of religion it wishes to follow and the character of the public worship which it thinks appropriate to establish.

§ 130. When there is not yet a religion established by law.

If there is not yet a form of religion accepted by the public authority the Nation should give all its care to find out and establish the best one. That which shall have the approbation of the majority is to be accepted and publicly established by law, and it then becomes the religion of the State. But if a considerable part of the Nation persists in following another, the question arises what the Law of Nations prescribes in such a case. First, let us remember that liberty of conscience is derived from the natural law, and there can be no constraint regarding it. There remain, then, only two steps to take—either to permit that body of the citizens to exercise the form of religion they desire to profess or to separate them from the society, leaving to them their goods and their section of the national territory, and thus to form two new States in place of one. The latter alternative seems entirely improper; it would weaken the Nation and thus be contrary to the care which a Nation should have for its self-preservation. Hence it is better to take the former position, and thus to establish two forms of religion in the State. But if these two forms are so incompatible that it is to be feared they will create divisions among the citizens and disturb their intercourse, there is a third stand to take, a wise medium between the two former, of which the Swiss have given us examples. The cantons of Glarus and Appenzel were both divided into two parties in the sixteenth century. One remained in the Roman Church, the other embraced the Reformation. Each party had its separate government for internal affairs; but they united for foreign affairs and formed but one and the same Republic and canton.

Finally, if the number of citizens who wish to profess a religion different from that established by the Nation, if the number, I repeat, is inconsiderable, and if for good and just reasons it is not found convenient to permit the exercise of several religions in the State, those citizens have the right to sell their lands and to withdraw with their families and carry away their goods; for their compact with the society and their subjection to public authority can never operate to the prejudice of their liberty of conscience. If the society does not allow me to do what I believe myself bound to do by an indispensable obligation it must permit me to take my leave.

§ 131. When there is a religion established by law.

When the choice of a religion has already been made, and when it has been established by law, the Nation ought to protect and uphold that religion, and to maintain it as an institution of the greatest importance, without, however, rejecting blindly such changes as may be proposed with the object of rendering it purer and more useful; for in all things we must seek perfection (§ 21). But as every innovation in such matters is full of danger and can hardly come about without creating disturbance, it should not be undertaken lightly or without necessity or grave reasons. It is for the society, the State, the whole Nation, to pronounce upon the necessity or the appropriateness of these changes, and it does not belong to any individual to undertake them on his own initiative, nor consequently to preach to the people a new doctrine. Let him propose his ideas to the rulers of the Nation and submit to the orders he shall receive from them.

But if, as so often happens, a new form of religion should spread and be taken up by the people independently of the public authority and without any deliberate action on the part of the whole people, the case should be reasoned out as we have done in the preceding paragraph, where there was question of choosing a religion; attention should be given to the number of those who follow the new doctrines, remembering all the while that no human power has control over men's consciences, and joining sound political principles to those of justice and equity.

§ 132. Duties and rights of the sovereign in the matter of religion.

Such are, in brief, the duties and the rights of a Nation in the matter of religion. We come now to those of the sovereign. They can not be in this case precisely the same as those of the Nation which the sovereign represents. The nature of the subject prevents this, since religion is a matter over which no one may give up his liberty. In order to show clearly these duties and rights of the Prince and to put them on a solid basis, we must call to mind the distinction which we drew in the two preceding paragraphs. If there is question of adopting a religion in a State where there is no established one, the sovereign may without doubt favor the one which seems to him the true or the best religion, and he may proclaim it and endeavor by gentle and suitable means to have it established; it is even his duty to do so, since he is obliged to look out for whatever concerns the welfare of the Nation. But he has no right to use his authority for purposes of constraint. Since there was no established religion in the society when he came to the throne, no power was given him over that subject; the maintenance of the laws relating to religion does not come within the power or the authority conferred upon him. Numa was the founder of the religion of the Romans, but he persuaded the people to accept it. If he could have imposed it by command he would not have had recourse to the revelations of the nymph Egeria. Although the sovereign may not use his authority to establish a religion in a country where there is none, he has the right, and the duty as well, to use all his power to prevent the introduction of a form which he believes to be perversive of morality and dangerous to the State; for he must remove from the people whatever might injure them, and new doctrines, instead of being an exception to this rule, are one of its most important objects. We shall see in the following paragraphs what are the duties and rights of the Prince in respect to a religion publicly established.

§ 133. In case there is an established religion.

The Prince or the ruler to whom the Nation has confided the care of the government and the exercise of the sovereign power is bound to watch over the preservation of the received religion, the form of worship established by law, and has the right to put down those who undertake to destroy it or to trouble it. But in order to perform this duty both justly and wisely he ought never to lose sight of the character of his rights and the reasons for their exercise. Religion is of extreme importance for the welfare and the peace of society, and the Prince must give his attention to whatever may interest the State. That is the extent to which he is called to concern himself with religion—to protect and defend it. Hence he may only interfere upon that ground, and consequently he should only use his power against those whose conduct in the matter of religion is hurtful or dangerous to the State, and not to punish pretended offenses against God, to whom alone belongs vengeance as the sovereign judge and the searcher of hearts. Let us remember that religion is only an affair of the State in so far as it is exterior and publicly established. So far as it exists in the heart it can only be an affair of the conscience. The Prince has only the right to punish those who disturb the society, and it would be very unjust for him to inflict punishment upon anyone for his private opinions when such a person does not seek to give expression to them nor to obtain followers. It is a fanatical idea and a source of crying evil and injustice to fancy that weak mortals must take upon themselves the cause of God, maintain His honor by force, and avenge His enemies. "Let us only give to sovereigns," said a great statesman and an excellent citizen,(*a*) "for the common good, the power to punish those who offend against charity in the society. It does not come within the scope of human justice to avenge what belongs to the cause of God." Cicero, who was as able and great in State affairs as in philosophy and oratory, was of the same opinion as the Duke of Sully. In the laws which he proposed on the subject of religion, he says with reference to religious sentiment and belief, "if any one be guilty, God will avenge it"; but he holds that crime capital which might be committed against the religious ceremonies established for public occasions, in which the whole State has an interest.(*b*) The wise Romans were very far from persecuting a man for his beliefs. They merely required that he should not disturb what concerned the public order.

§ 134. Object of his care, and means which he should employ.

The beliefs or the opinions of individuals, their ideas of God—in a word, interior religion—should be the object of a prince's attention, just as are the sentiments of heart which are connected with those beliefs. He should neglect no means to make known the truth to his subjects and to inspire them with proper sentiments, but he should use only gentle and paternal means to that end.(*c*) In this matter he can not command (§ 128). It is in respect to religion which is exterior and is publicly exercised that his authority may be used. His office is to preserve that religion and to prevent the disorders and troubles it might cause. To preserve religion he must maintain it in its original purity, and see to it that it be faithfully observed in all its public acts and ceremonies, and punish those who dare to attack it openly. But he can only use force to exact silence, and may never constrain anyone to take part in public ceremonies. Only disturbances or hypocrisy could result from constraint.

The diversity in religious beliefs and forms of worship has frequently been a cause of disorder and fatal dissension in the State, and for that reason many persons think that only one form of religion should be permitted in the State. A prudent and fair-minded sovereign will judge from the circumstances of each case whether it be well to tolerate or to forbid the exercise of several different forms of worship.

(*a*) The Duke of Sully. See his memoirs edited by M. de l'Ecluse, vol. v, pp. 135, 136.

(*b*) Qui secus faxit, Deus ipse vindex erit . . . Qui non paruerit, capitale esto. (De Legibus, Bk. II.)

(*c*) Quas (religiones) non metu, sed ea conjunctione, quæ est homini cum Deo, conservandas puto. (Cicero, De Legibus, Bk. I.) A beautiful lesson, given by a pagan philosoper to Christians.

§ 135. Toleration.

But in general we may assert without hesitation that the surest and the fairest means of preventing disturbances resulting from diversity of creeds is a universal tolerance of all forms of religion which contain nothing dangerous either to morals or to the State. Let interested priests declaim; they would not tread under foot the laws of humanity and of God himself to make their doctrine triumph if it were not the source of their wealth, their pomp, and their power. Do but drive out the spirit of persecution, punish severely anyone who shall disturb others because of their belief, and all the various sects will be found living together in peace in a common country, and vying with one another to become good citizens. Holland and the States of the King of Prussia give proof of it: Protestants, Lutherans, Catholics, Pietists, Socinians, and Jews all live together in peace because they have all the equal protection of the sovereign. Only those who trouble the peace of others are punished.

§ 136. What the prince should do when the nation wishes to change its religion.

If, in spite of the care of the Prince to preserve the established religion, the whole Nation, or the larger part of it, is dissatisfied with it and desires a change, the sovereign may not force or use any constraint upon his people in such a matter. A religion is publicly established only for the welfare and benefit of the Nation. Apart from the fact that it would have no value except as an expression of the heart, the sovereign has no rights in the matter but those resulting from the duty imposed upon him by the Nation, namely, to protect the religion which it shall think proper to profess.

§ 137. Difference of religion does not deprive the prince of his crown.

But it is also entirely just that the Prince should be free to continue in his own belief without losing his crown. All that can be required of him is that he protect the religion of the State. In general, a difference of religious belief does not deprive a prince of his rights of sovereignty unless one of the fundamental laws ordain otherwise. The pagan Romans did not cease to obey Constantine when he became a Christian, nor did the Christians revolt against Julian when he gave up his belief.

§ 138. The duties and rights of the sovereign reconciled with those of the subjects.

We have established liberty of conscience for individuals (§ 128). At the same time we have shown that the sovereign has the right, and even the duty, to protect and maintain the State religion, and not to permit anyone to undertake to change it or to destroy it, and that he may even refuse to allow, under certain circumstances, more than one form of public worship in the whole country. Let us reconcile those different duties and rights which may perhaps be thought to be contradictory; and if possible let us satisfy everyone on this delicate and important subject.

If the sovereign is willing to allow the public exercise of but one religion he should not oblige anyone to act against his consicence nor force him to take part in a form of worship he disapproves of and profess a religion he believes to be false; and the subject on his part should rest content with not being obliged to be a disgraceful hypocrite, and should serve God according to his light, in private and in his own house, realizing that Providence does not expect public worship of him when he has been placed in such circumstances that he can not practise it without disturbing the State. God wishes us to obey our sovereign and to avoid whatever can be hurtful to society; these are absolute precepts of the natural law; that of public worship is conditional, and depends upon the effects which such worship may produce. Private worship is necessary on its own account, and one ought to confine oneself to it in cases where it is more suitable. Public worship has for its object the moral improvement of men by their rendering honor to God. It fails to accomplish that object and ceases to be praiseworthy on those occasions when it only produces trouble and scandal. If a public manifestation of his belief is of absolute necessity to a person, let him leave the country where he is forbidden to fulfill that duty according to his conscience and go off and join those who profess the same religion he professes.

§ 139. The sovereign should supervise the affairs of religion, and exercise authority over those who teach it.

The tremendous influence which religion has over the peace and prosperity of society proves without question that the ruler of the State has a right of inspection over matters relating to it and authority over the ministers who teach it. The aim of society and of civil government necessarily demands that the ruler shall be clothed with all the rights without which he can not exercise his authority in the manner most beneficial to the State. These are the *royal prerogatives* (§ 45), of which no sovereign may divest himself without the express consent of the Nation. Hence an inspection over matters of religion and authority over its ministers form one of the most important of these rights, since without this power the sovereign will never be able to prevent the disturbances which religion may occasion in the State, nor make use of that powerful influence for the welfare and safety of the society. It would indeed be strange if a Nation, a group of men united in civil society for their common advantage, in order that each one may provide peacefully for his needs, labor for his advancement and happiness, and live as befits a rational being—if such a society, I say, had not the right to follow its own ideas in so important a matter, to determine what it thinks best on the subject of religion, and to see that nothing dangerous or hurtful is introduced. Who will presume to dispute the right of an independent Nation to regulate this matter, as all others, according to its own conscience? And once it has adopted a form of religion and of worship, can it not delegate to its ruler all the power which belongs to it of maintaining, regulating, and directing that form and seeing that it be observed?

Let no one say that the care of sacred things does not belong to a secular hand. Such talk is but idle declamation, when brought before the bar of reason. There is nothing on earth more august and more sacred than a sovereign. And why should God, who by his providence calls the sovereign to watch over the safety and welfare of all the people, take away from him the direction of the most powerful influence over men's conduct? The natural law grants him that right among all others essential to good government, and nothing can be found in Scripture against his having it. Among the Jews neither the King nor anyone else could make any change in the law of Moses; but the sovereign watched over its preservation and could check the high priest when he failed in his duty. Where is it stated in the New Testament that a Christian prince has nothing to say on the subject of religion? For it clearly and expressly commands submission and obedience to rulers. It is vain to cite to the contrary the example of the Apostles, who preached the Gospel in spite of sovereigns; whoever wishes to depart from the ordinary rules must have a divine mission and prove his authority by miracles.

No one can deny that the sovereign has the right to see that religious beliefs do not carry with them any principles hurtful to the welfare and safety of the State. Hence it is part of his duty to examine doctrines of religion and to decide which should be taught and which should be suppressed.

§ 140. He ought to prevent any abuse of the established religion.

Moreover, the sovereign ought to watch carefully that no misuse be made of the established religion, whether this be by taking advantage of religious discipline to satisfy hatred, avarice, or other passions, or by presenting its doctrines in a light prejudicial to the State. What dangerous results might not be produced in society if fantastic reveries, seraphic devotion, and lofty flights of speculation were to exercise their influence over weak minds and docile hearts? If a society of would-be saints were to renounce the world and as a body give up business, and even labor, it would become an easy prey for the first ambitious neighbor; or if left in peace it would not survive to the next generation. By consecrating their virginity to God the two sexes would thus refuse to respond to the designs of God and to the call of nature and of the State. Sad as it is for the missionaries, it appears clearly, even from the History of New France by Père Charlevoix, that their labors were the principal cause of the ruin of the Hurons. The author expressly says that a large number of these neophytes would think of nothing but their faith, and that they lost their energy and their courage and cut themselves off from the rest of the people, etc. The tribe was soon destroyed by the Iroquois, whom it had previously been wont to defeat.(*a*)

§ 141. Authority of the sovereign over the ministers of religion.

In addition to the duty of the Prince to watch over the affairs of religion, he must have authority over its ministers. Without the latter right the former would be to no purpose, and both are derived from the same principles. It is absurd, and contrary to the basic principles of society, that citizens should expect to be independent of the sovereign authority in a matter of such importance to the welfare and safety of the State. Such a policy would set up two independent authorities in the same State, the certain result of which would be factions and disturbances and consequent disaster to the State. There can be but one supreme power in the State; the duties of subordinates vary with their offices, but whether ecclesiastics, magistrates, or military commanders, they are all, in their several departments, equally subject to the sovereign.

§ 142. Nature of that authority.

It is true that a prince could not with justice force an ecclesiastic to preach a doctrine or follow a rite which the latter did not think pleasing to God. But if the minister of religion can not comply in this matter with the will of the sovereign, he should resign his position, and look upon himself as no longer called to fulfill it, since such a call involves the necessity both of teaching and acting with sincerity as his conscience dictates, and of complying with the will of the sovereign and the laws of the State. Who would not be provoked at seeing a bishop boldly resist the orders of the sovereign and the decrees of the supreme tribunals, and solemnly assert that he holds himself accountable to God alone for the power confided to him?

§ 143. Rule to be followed with respect to the clergy.

On the other hand, if the clergy are discredited they will be unable to produce the results expected from their ministry. The rule which should be followed in dealing with them may be briefly stated. Show them great respect, but give them no supremacy, and by no means any independence. In the first place, the clergy, like every other body, should be subject in the duties of their office, as in everything else, to the public authority, and accountable for their conduct to the sovereign. Secondly, it should be the duty of the Prince to see that the position of the clergy be respectable, and to give them that degree of authority which they need to carry out the duties of their office successfully, and to assist them, if need be, by his authority. Every person holding an office should be vested with the authority corresponding to its duties; otherwise he can not fulfill them properly. I see no reason why the clergy should be excepted from this general rule; but as the situation is a very delicate one and full of danger, the Prince must watch carefully that the clergy do not abuse their authority. In securing respect for the ecclesiastical character he must see to it that this respect is not carried to the extent of superstitious veneration, so as to put in the hands of an ambitious priest a power which he may use to lead weak minds at his will. As soon as the clergy form a body apart they become formidable. The Romans (we shall often cite their example) had the

---

(*a*) Histoire de la Nouvelle France, Liv. V, VI, VII.

wisdom to choose their high priest and the chief ministers of religion from members of the Senate; they made no distinction between ecclesiastics and the laity: all citizens were on an equal footing.

§ 144. Summary of the reasons for the rights of the sovereign on the subject of religion, with authorities and examples.

Take away from the sovereign this power over religion and this authority over the clergy, and how can he keep religion free from whatever is hurtful to the welfare of the State? How can he insist that it be always taught and practised as is best suited to the public good? And above all, how can he prevent the disturbances which may be occasioned either by doctrines or by the manner in which discipline is carried out? Yet those are the duties and responsibilities of the sovereign, which belong only to him and from which nothing can dispense him.

Hence we see that the rights of the crown in ecclesiastical matters have been regularly and faithfully upheld by the Parliaments of France. The wise and enlightened members of those honorable assemblies are firmly convinced of the principles which sound reason dictates in this matter. They realize the importance of not permitting a subject of so delicate a nature, so comprehensive in its connections and its influence, and so important in its consequences, to be withdrawn from the public authority. What! Shall ecclesiastics undertake to propose as an article of faith some obscure, useless doctrine which is not an essential part of the received religion, and shall they separate from the church and defame those who are not blindly obedient, and refuse them the sacraments and even burial; and shall the Prince be unable to protect his subjects and save the Kingdom from a dangerous schism?

The Kings of England have secured the rights of the Crown by causing themselves to be recognized as the heads of the church—a course not less approved by reason than by sound policy. It is, moreover, in accordance with ancient usage. The first Christian Emperors exercised all the functions of heads of the church; they made laws for it,(*a*) assembled councils, and presided in them; they appointed and removed bishops, etc. In Switzerland there are wise Republics whose rulers have realized the full extent of the supreme authority and have consequently subjected the ministers of religion to it, without, however, constraining them in point of conscience. They have drawn up a statement of the doctrine which is to be preached, and have published laws of ecclesiastical discipline according to their view of how it should be exercised in the territory subject to them, so that those who are unwilling to conform to these enactments may refrain from devoting themselves to the service of the church. They keep the ministers of religion dependent upon them, and allow discipline to be exercised only under their authority. It is not likely that these Republics will ever be the scene of disturbances occasioned by religion.

§ 145. Evil results of the contrary opinion.

Had Constantine and his successors caused themselves to be formally acknowledged as heads of the church, and had Christian kings and princes been able to uphold the rights of sovereignty in this matter, would we have ever witnessed the dreadful disturbances that have resulted from the pride and ambition of certain Popes and ecclesiastics, emboldened by the weakness of princes and supported by the superstition of the people? Streams of blood have been shed in the quarrels of monks, and over speculative questions which were often unintelligible and almost always of as little worth towards the salvation of souls as they were of no concern, in themselves, to the welfare of the State. Citizens and brothers have been armed against one another; subjects have been stirred up to revolt; emperors and kings have been dethroned. *Tantum religio potuit suadere malorum.* We know the history of the Emperors Henry IV, Frederic I, Frederic II, and Louis of Bavaria.

(*a*) See the Theodosian Code.

Was it not the independent position of ecclesiastics, and the system of submitting the affairs of religion to a foreign power which plunged France into the horrors of the League and sought to deprive her of the best and greatest of her Kings? But for that peculiar and dangerous system, should we have seen a foreigner, Pope Sixtus V, undertake to violate the fundamental law of the Kingdom and declare the lawful heir incapable of wearing the crown? Should we have seen at other times and in other places (*a*) the succession to the throne made uncertain for lack of a formality, a dispensation, the validity of which was questionable, and which a foreign prelate claimed the sole right to grant? Would that same foreigner have assumed the power of deciding upon the legitimacy of a king's children? Would Kings have been assassinated in consequence of an abhorrent doctrine; (*b*) would a section of France have feared to acknowledge the best of its Kings (*c*) until he had received absolution from Rome; and would several other princes have been prevented from securing peace to their Nation because they had not the power to decide matters relating to religion in their Kingdom? (*d*)

§ 146. The abuses in detail. (1) The power of the popes.

All that we have set forth above is derived so clearly from the ideas of independence and sovereignty that it will never be questioned by anyone in good faith or who is willing to draw logical inferences. If all the affairs of religion can not be finally regulated by the State, it is not free and its Prince is only half sovereign. There is no middle course. Either each State must be master in its own territory on the subject of religion as on every other, or the system of Boniface VIII must be accepted and all Roman Catholic Christendom be looked upon as a single State, with the Pope as supreme head and kings as subordinate administrators of temporal affairs, each in his own province, much as the Sultans were formerly under the sovereignty of the Caliphs. We know that the above-mentioned Pope dared to write to Philip the Fair, King of France, *Scire te volumus, quod in spiritualibus et in temporalibus nobis subes.* (*e*) We wish you to understand that you are subject to us both in spiritual and in temporal affairs. In the canon law (*f*) can be found his famous bull *Unam sanctam*, in which he assigns to the Church two swords, or a double power, spiritual and temporal, and condemns those who do not admit it as persons who, after the example of the Manicheans, would set up two principles; and ends by declaring "that it is an article of faith, necessary to salvation, to believe that every human creature is subject to the Pontiff of Rome."

We shall consider the enormous power of the Popes as the first abuse resulting from the system which deprives sovereigns of their authority on the subject of religion. This power of a foreign court is absolutely opposed to the independence of Nations and the sovereignty of princes. It is capable of overthrowing a State; and wherever it is acknowledged the sovereign can not rule for the best interests of the Nation. We have already given as proof several striking examples (§ 145), and history furnishes numberless others. When the Senate of Sweden condemned Trolle, Archbishop of Upsal, for the crime of rebellion, to give up his See and end his days in a monastery, Pope Leo X presumed to excommunicate the chief execu-

---

(*a*) In England, under Henry VIII.

(*b*) Henry III and Henry IV were assassinated by fanatics who believed that in so doing they were serving God and the church.

(*c*) Henry IV. Though he had returned to the Roman church, a large number of Catholics did not dare to acknowledge him until he had received absolution from the Pope.

(*d*) Several Kings of France, during the civil wars of religion.

(*e*) Turretin (*Hist. Ecclesiast. Compendium*, p. 182), where can also be found the spirited answer of the King of France.

(*f*) *Extravag. Commun.*, Lib. 1. Tit. *De majoritate et obedientia.*

tive Sten Sture and the whole Senate and sentenced them to rebuild at their expense a fortress belonging to the archbishop which they had caused to be demolished, and to pay a compensation of a hundred thousand ducats to the deposed prelate.(*a*) The barbarous King Christiern of Denmark, acting on the authority of that decree, laid waste Sweden and shed the blood of her most illustrious nobles. Paul V hurled an interdict against Venice because of certain wise regulations, which, however, displeased the Pontiff, and threw the Republic into such a state of confusion that all the wisdom and resoluteness of the Senate could scarcely restore order. Pius V, in his bull, *In Cœna Domini*, of the year 1567, declares that all princes who impose new taxes, of whatever kind, upon their States, or increase existing ones, without the approval of the Holy See are *ipso facto* excommunicated. Is not such a declaration an attack upon the independence of Nations and a subversion of the authority of sovereigns?

In the unhappy days of the Dark Ages which preceded the Renaissance and the Reformation, Popes presumed to regulate the policy of sovereigns on the pretense that matters of conscience were at stake, and to judge of the validity of their treaties and break their alliances by declaring them not binding. But these attempts met with vigorous resistance, even in a country which was commonly regarded as possessing valor enough but very little enlightenment. The Papal nuncio, in order to disunite the Swiss from France, published an edict against those cantons which sided with Charles VIII, and declared them excommunicated if within fifteen days they did not abandon the interests of the Prince and enter into the confederation formed against him. But the Swiss regarded the edict as an abuse and issued in reply a protest which was published throughout their jurisdiction, thus setting at defiance a proceeding equally absurd and contrary to the rights of sovereigns.(*b*) We shall mention several similar attempts in treating of the faith of treaties.

§ 147. (2) Important offices conferred by a foreign power.

This power of the Popes has given rise to a further abuse against which a wise government will direct its whole attention. In several countries ecclesiastical dignities and important benefices are distributed by a foreign power, the Pope, who bestows them upon his creatures and frequently upon persons who are not subjects of the State. This practice is equally contrary to the rights of a Nation and to the most widely accepted principles of statesmanship. No Nation should permit foreigners to dictate its laws or to interfere in its affairs or deprive it of its natural advantages. How, then, can it be that there are States which allow a foreigner to appoint to offices which are of great importance to their happiness and peace? Those princes who have sanctioned the introduction of so great an abuse have been equally wanting in their duty to themselves and to their people. In our own times the Court of Spain has found itself forced to spend immense sums in order to regain peaceably and without danger the exercise of a right which belongs essentially to a Nation or to its sovereign.

§ 148. (3) Powerful subjects dependent upon a foreign court.

Even in those States whose sovereigns have managed to retain so important a right of the crown, the abuse continues to a great extent. It is true that the sovereign appoints to bishoprics and important benefices, but his authority is not competent to enable the persons appointed to enter upon the duties of their office; for that he must obtain a bull from Rome.(*c*) By that and many other bonds the

---

(*a*) History of the Revolutions of Sweden.

(*b*) Vogel, Traité historique et politique des alliances entre la France et les treize Cantons, pp. 35, 36.

(*c*) The letters of Cardinal d'Ossat show us what troubles, opposition, and delay Henry IV had to put up with when he wished to confer the Archbishopric of Sens upon Renauld de Baune, Archbishop of Bourges, who had saved France by receiving that great King into the Roman Catholic Church.

whole body of the clergy still depend upon the Roman Court; they look to it for dignities, and for the purple which, according to the proud pretensions of those who wear it, is to make them of equal rank with sovereigns; and they have everything to fear from its anger. Hence they almost invariably comply with its demands. On its part, the Court of Rome supports the clergy with all its power, it aids them with its political influence, it protects them against their enemies and against those who would limit their authority, and often even against the just resentment of the sovereign. In this way it binds them more and more closely to itself. Are not the rights of society impaired, and the first principles of the art of governing attacked, when a large number of subjects, who moreover hold office, depend upon a foreign power and are attached to its interests? Will a wise sovereign receive into the Kingdom men who preach such doctrines? No more than that was needed to cause all the missionaries to be driven out of China.

§ 149. (4) Celibacy of the priesthood; monasteries.

It was for the purpose of securing more firmly the attachment of the clergy that the practice of celibacy was devised. Priests and prelates who are already bound to the Roman See by their duties and their ambitions are still further detached from their country by the celibacy they are forced to keep. They are not united to civil society by family ties; their chief interests are in the Church, and, provided they meet with the favor of its head, they have no other concern. Whatever be the country of their birth, Rome is their refuge and the country of their adoption. Everyone knows that the religious orders are a sort of papal militia distributed over the face of the earth for the purpose of upholding and advancing the interests of their monarch. That is certainly a strange abuse, an overturning of the first laws of society. But it is not all. If prelates married they might enrich the State with a large number of good citizens and make use of wealthy benefices to educate suitably their children. But what numbers of men are to be found in monasteries, consecrated to a life of ease under the cloak of religion! They are equally useless to society in peace and in war, neither serving it by their labor in the necessary professions nor by their valor as soldiers; and yet they enjoy immense revenues, while the people must toil to support these swarms of drones. What would we think of a husbandman who should protect the worthless drones and allow them to feed upon the honey gathered by the other bees?(*a*) It is not the fault of the fanatical preachers of an over-sublime sanctity if all their devotees do not imitate the celibacy of the monks. How could princes have allowed that a practice, both contrary to nature and hurtful to society, should be publicly extolled as a sublime virtue? The Romans made laws tending to lessen the number of celibates and to encourage marriage;(*b*) but superstition soon attacked those just and wise provisions, and under the influence of ecclesiastics the Christian Emperors thought it their duty to abolish them.(*c*) Several Fathers of the Church censured those laws of Augustus; "Doubtless," says a great writer,(*d*) "with a praiseworthy zeal for the things of the other life, but with very little knowledge of the affairs of this one." That great writer was a member of the Roman Church; he did not dare to say openly that voluntary celibacy is to be condemned even with respect to conscience and the interests of another life. To conform oneself to the Law of Nature and to carry out the designs of the Creator is certainly a manner of life befitting the truest

---

(*a*) This statement has no reference to religious houses in which literary pursuits are followed. Institutions which offer to learned men a peaceful retreat and the leisure and quiet necessary to a profound study of the sciences are always praiseworthy and may prove very useful to the State.

(*b*) The Papia-Poppæan law.

(*c*) In the Theodosian Code.

(*d*) Président de Montesquieu, in his *Esprit des Lois*.

religious belief. Those who are able to bring up a family should marry and give their attention to the proper education of their children; they will thus perform their duty and be assuredly in the path of salvation.

§ 150. (5) Exaggerated pretensions of the clergy: preeminence.

The great and dangerous pretensions of the clergy are a further consequence of the system which withdraws from the control of the civil power whatever relates to religion. In the first place, ecclesiastics, under claim of the sanctity of their office, have sought to put themselves above all other citizens, even above the chief officers of state; and contrary to the express command of their Master, who said to his apostles, "Seek not the first places at feasts," they have claimed for themselves almost everywhere the first rank. Their head, at Rome, has sovereigns kiss his feet; emperors have held the bridle of his horse; and if bishops, and even simple priests, do not put themselves above their Prince in these days it is because the times are against them; they have not always been so submissive, and one of their writers has even had the boldness to say that, "a priest is as much above a king as a man is above a beast."(*a*) How many writers, better known and more highly esteemed than that one, have been pleased to repeat approvingly the foolish words attributed to the Emperor Theodosius I: "Ambrose has taught me how much higher than the Empire is the priesthood."

We have already said that ecclesiastics should be held in honor; but modesty, and even humility, befits them, and in preaching it to others they can not becomingly neglect it themselves. I should not refer to an empty ceremonial if it did not have very real consequences in the pride which it inspires in many priests and in the impression it can create in the minds of the people. Good order requires that there should be in society no figure more respectable in the eyes of the citizens than their sovereign, and after him, those to whom he has confided a part of his authority.

§ 151. (6) Independence and immunities.

Ecclesiastics have not been satisfied to follow this wise rule. To be independent in the exercise of their functions was not enough; they have even undertaken, with the aid of the Court of Rome, to release themselves from the control of the State on all points. The time was when an ecclesiastic could not be made to appear before a secular tribunal for any charge whatsoever. The Canon Law formally declares that "it is improper for ecclesiastics to be judged by laymen."(*b*) Popes Paul III, Pius V, and Urban VIII, in their bulls *In Cœna Domini*, excommunicate lay judges who presume to have ecclesiastics tried before them. Even French bishops have not feared to assert on several occasions "that they were not subject to any temporal prince." Here are the words which the General Assembly of the French clergy presumed to make use of in 1656: "The decree of the Council having been read, it was disapproved by the Assembly, inasmuch as it gave to the King the right to judge bishops, and appears to subject their immunities to his judges."(*c*) There are Papal decrees excommunicating whoever shall imprison a bishop. According to the principles of Rome, a prince has not the power to inflict capital punishment upon an ecclesiastic, although a rebel or a criminal; he must apply to the ecclesiastical authorities, who, if they think fit, will turn him over to the secular power after having degraded him. Numerous examples can be found in history of bishops who have gone unpunished or have been but lightly punished for crimes which nobles of the highest rank have paid for with their lives. John of Braganza,

---

(*a*) Tantum sacerdos præstat regi, quantum homo bestiæ. Stanislaus Orichovius. (See Tribbechov, *Exerc.* I, *ad Baron. Annal.*, sec. 2, and Thomas. *Not. ad Lancell.*)

(*b*) Indecorum est laïcos homines viros ecclesiasticos judicare. Can. in nona actione 22, XVI q. 7.

(*c*) See *Traditions des faits sur le système d'indépendance des Evêques.*

King of Portugal, subjected to just punishment the nobles who had conspired to overthrow him; he did not dare to put to death the Archbishop of Braga, who was the author of the shameful plot.(*a*)

That a numerous and powerful body of men should be beyond the control of the State and dependent upon a foreign Court is a subversion of public order and a manifest diminution of sovereignty. It is a moral blow given to the civil society, one of whose essential elements is that every citizen be subject to the public authority. The immunity claimed by the clergy in this respect is to such an extent contrary to the natural and necessary law of the State that even the King has not the power to grant it. But ecclesiastics tell us that they have received this immunity from God Himself. While waiting for proof of their assertion let us hold as certain this principle, that God desires the welfare of States, and not a situation which can only result in trouble and disaster.

§ 152. (7) Immunity of church property.

The same immunity is claimed for church property. The State could, doubtless, exempt this property from all taxes at a time when it should scarcely suffice to support the clergy. But the latter may only hold this exemption as a grant from the public authority, which has always the right to revoke it when the welfare of the State so demands. One of the fundamental and essential laws of every society is that, when the necessity arises, its members must contribute, in proportion to their property, to the needs of the State; hence the Prince himself can not, on his own authority, grant a complete exemption to a numerous and very wealthy class of people without doing great injustice to the rest of his subjects, upon whom, in consequence of such an exemption, the entire burden of taxation falls.

Far from an exemption being due to church property because of the fact that it is consecrated to God, on the contrary it is for that very reason that it ought to be the first to be taxed for the welfare of the State; for nothing is more pleasing to the common Father of mankind than to preserve a Nation from ruin. As God is beyond all need, the consecration of property to Him is to destine it to uses which are pleasing to Him. Moreover, as ecclesiastics themselves assert, church property is in a large measure destined for the relief of the poor. When the State is in need its poverty surely has first claim and is the most worthy of help. We may even extend the principle to the most ordinary cases and assert that to tax church property for the current expenses of the State, and thus relieve the burden upon the people, is in reality to give this property to the poor to whom it is destined. To devote to luxury, pomp, and the pleasures of the table property which should be set apart for the relief of the poor is certainly contrary to the spirit of religion and the intention of its Founder.(*b*)

§ 153. (8) Excommunication of public officers.

Not satisfied with making themselves independent of the State, ecclesiastics undertook to subject all men to their rule; and they might well despise those who were foolish enough to let them do so. Excommunication was a formidable weapon among ignorant and superstitious persons, who knew not how to restrict it within its limits nor to distinguish use from abuse. Disorders resulted, which we have seen prevailing even in some Protestant countries. Ecclesiastics have, on their own authority, presumed to excommunicate public officials, men of service to the State, and have claimed that, being under the ban of the Church, such officials could no longer hold office. How unreasonable a claim and how contrary to good order in the State! Shall a Nation no longer have the right to confide the care of its affairs, its welfare, peace, and security to those who seem best fitted and most worthy to be

---

(*a*) *Révolutions de Portugal.*

(*b*) See *Lettres sur les prétentions du Clergé.*

intrusted with it? An ecclesiastic may, when it so pleases him, deprive the State of its wisest and most efficient officers and the Prince of his most faithful servants. This absurd claim has been condemned by princes and even by wise and distinguished prelates. We read in the 171st letter of Ives de Chartres to the Archbishop of Sens that the royal capitularies, conformably to the third canon of the twelfth Council of Toledo, enjoined prelates to receive back persons whom they had excommunicated and whom the King has taken into his favor or received at his table in order that the church might not appear to reject or condemn those whom it pleased the King to call to his service.(*a*)

§ 154. (9) And of sovereigns themselves.

The excommunication of sovereigns themselves, accompanied by a decree releasing subjects from their oath of allegiance, constitutes the climax of this great abuse, and it is scarcely credible that Nations should have submitted to so unjust an attack upon their rights. We referred to this subject in §§ 145 and 146. The thirteenth century presents striking examples of it. Because he wished to maintain the rights of the Empire over the various provinces of Italy, Otho IV was excommunicated by Pope Innocent III and deprived of his imperial crown, and his subjects were absolved from their oath of allegiance. Abandoned by the princes of the Empire, the unfortunate Emperor was forced to resign the crown to Frederic II. John Lackland, King of England, wishing to uphold the rights of the crown in the election of an Archbishop of Canterbury, found himself exposed to the presumptuous claims of the same Pope. Innocent excommunicated the King, put the whole Kingdom under an interdict, declared John unworthy of the crown, and released his subjects from their oath of allegiance; he stirred up the clergy against John and roused the people to revolt; he appealed to the King of France to take up arms against John and dethrone him, and even proclaimed a crusade against him as he would have done against the Saracens. King John seemed at first to be determined to defend himself vigorously; but he soon lost courage and allowed himself to be humiliated so far as to surrender his Kingdoms into the hands of the Pope and receive them back from him and hold them as a fief of the Church on condition of paying tribute.(*b*)

The Popes have not been alone guilty of these usurpations. There are cases of councils which have taken part in them. The Council of Lyons, summoned by Innocent IV in 1245, was bold enough to order the Emperor Frederick to appear before it and clear himself of the charges brought against him, threatening him with the penalties of the church should he refuse. That great Prince did not trouble himself much over so irregular a proceeding. He said "that the Pope wished to set himself up as judge and sovereign; whereas from the earliest times the Emperors themselves had summoned the Councils, at which Popes and prelates showed them the respect and obedience which were their due."(*c*) Nevertheless the Emperor yielded somewhat to the superstition of the times and deigned to send his ambassadors to the Council to defend his cause; but this did not prevent the Pope from excommunicating him and declaring the Empire forfeited. Frederick was great enough to disdain these empty threats and managed to keep his crown, in spite of the election of Henry, Landgrave of Thuringia, whom the ecclesiastical electors and several bishops ventured to proclaim King of the Romans; but the election counted for so little that Henry was ridiculed as *King of the Priests*.

I should never end if I wished to cite all the cases. Those I have mentioned are a sufficient discredit to human nature. It is humiliating to see to what an

---

(*a*) See *Lettres sur les prétentions du Clergé*.

(*b*) Matthew of Paris; Turretin, *Compend. Hist. Eccles.*, Sæcul. XIII.

(*c*) Heiss, *Histoire de l'Empire*, Liv. II, Ch. XVII.

extent of folly superstition had reduced the Nations of Europe in those unhappy times.

§ 155. (10) The clergy extending their control into every field, and disturbing the administration of justice.

By the use of the same spiritual arms the clergy extended their control into every field, usurped the authority of judicial tribunals, and disturbed the administration of justice. They claimed the right to take cognizance of all cases, "because of the sin involved, the jurisdiction over which," said Pope Innocent III (in Cap. Novit. de Judiciis), "every reasonable man must know belongs to us." In 1329, the French prelates dared to say to Philip de Valois that to prevent persons from carrying any sort of cases to the ecclesiastical tribunals was to deprive the Church of all its rights, "Omnia ecclesiarum jura tollere."(*a*) Hence they wished to be judges of all disputes. They boldly clashed with the civil authorities and made themselves formidable by the use of excommunications. It even happened that, as dioceses sometimes cut across the boundaries of States, a bishop would summon foreigners to appear before him in purely civil cases and undertake to give a judgment, in clear violation of the Law of Nations. The abuse had been carried so far, three or four centuries ago, that our wise ancestors thought they ought to take serious measures to put a stop to it. They stipulated in their treaties that no citizen of the Confederation "should be made to appear before spiritual courts to answer for debts of money, since each citizen should be content with the ordinary local courts."(*b*) We find in the pages of history several cases in which the Swiss resisted the encroachments of bishops and their officials.

§ 156. (11) Money drawn to Rome.

There is no affair of life over which the clergy did not extend their authority on the pretext that questions of conscience were involved. They made newly-married husbands purchase permission to lie with their wives the first three nights after the marriage.(*c*) This farcical device leads us to note another abuse, clearly contrary to the rules of sound policy and to the duties of a Nation to itself. I refer to the immense sums which the issue of bulls and dispensations annually drew to Rome from all countries in communion with it. And what shall we say of the scandalous traffic in indulgences? But in the end it proved ruinous to the Court of Rome, which in seeking to gain too much suffered irreparable losses.

§ 157. (12) Laws and practices contrary to the welfare of the state.

Finally this independent authority confided to ecclesiastics, who were often little capable of understanding the true principles of government, or too careless to instruct themselves in them, and who were given up to a visionary fanaticism, and to empty notions of a fanciful and exaggerated purity—this authority, I say, gave rise, under the pretense of furthering holiness of life, to laws and practices hurtful to the State. We have noticed some of them already. Grotius relates a remarkable instance. "In the ancient Greek Church," he says, "there was for a long time in force a canon in virtue of which those who had killed an enemy in any war whatsoever were excommunicated for three years."(*d*) A fine reward meted out to the heroes who defended their country instead of the crowns and triumphs with which pagan Rome used to honor them! Pagan Rome became mistress of the world; it crowned its bravest warriors. The Empire, on becoming Christian, soon fell a prey to barbarians; its subjects received, as their reward for defending it, a humiliating excommunication; in devoting themselves to an idle life, they thought they were following the path to heaven, and found themselves in fact on the road to station and wealth.

(*a*) See Leibnitz, *Codex Juris Gent. Diplomat.*, Dipl. LXVII, §9.

(*b*) *Ibid.*, Alliance of Zurich with the cantons of Uri, Schweitz, and Unterwalden, May 1, 1351, at § 7.

(*c*) See *Réglement du Parlement*, Decree of March 19, 1409. *Esprit des Lois.* "These nights were necessarily the ones chosen," says Montesquieu; "not much money could have been got from the others."

(*d*) *De Jure Belli et Pacis*, Lib. II, Cap. XXIV, at the end. He quotes *Basil. ad Amphiloch.*, X, 13. *Zonar. in Niceph. Phoc.*, Vol. III.

CHAPTER XIII.

Justice and Public Administration.

§ 158. A nation ought to make justice prevail.

After the care a Nation should bestow on the subject of religion, one of its principal duties relates to justice. The most serious attention should be given to the administration of justice, and proper measures taken to enable everyone to obtain it in as certain, prompt, and easy a manner as possible. This obligation follows from the end and from the very compact of civil society. We have seen (§ 15) that men only subjected themselves to the bonds of civil society and surrendered in its favor a part of their natural liberty, with the object of enjoying their possessions in peace and of obtaining justice with certainty. A Nation would therefore be wanting in its duty towards itself and would deceive the individuals who compose it, if it did not give its serious attention to make perfect justice prevail. It owes this attention to its happiness, its peace, and its prosperity. Citizens are quickly dissatisfied and disturbances prevail in the State when it is felt that justice can not be promptly and easily obtained in all disputes; the civic virtues disappear and society is weakened.

§ 159. And to frame good laws.

Justice is made to prevail in two ways—by the enactment of good laws and by a care on the part of those in office to have them observed. In treating of the constitution of a State (Ch. III) we have already shown that a Nation ought to frame wise and just laws, and we there explained why we can not enter here into the details of those laws. If men were always at once just and enlightened the laws of nature would doubtless be sufficient for society. But ignorance, the deceptions of self-love, and passion too often render those sacred laws ineffectual. Hence we see that all civilized Nations have felt the necessity of making positive laws. There is need of general rules of conduct, definite in character, so that each individual may understand clearly and without self-deception what are his rights. At times it is even necessary to depart from natural justice in order to prevent abuse and fraud and to adapt the laws to circumstances; and, since the sentiment of duty is often insufficient to control men's conduct, there is need of a penal sanction to make the laws fully efficacious. The Law of Nature is thus supplemented by the civil law.(*a*) It would be unsafe to commit the interests of the citizens to the arbitrary judgment of the courts; the legislative body should assist the understanding of the judges and control their prejudices and their inclinations and direct their decisions by simple, fixed, and definite rules. Here, again, we have civil laws.

§ 160. And to have them observed.

The best laws are useless if they be not observed. The State must therefore endeavor to uphold them and to cause them to be respected and faithfully carried out, and to this end the wisest, most comprehensive and efficacious measures must be taken. Thereon will depend, in large part, its happiness, its glory, and its peace.

§ 161. Duties of the prince in this respect.

We have already remarked (§ 41) that the sovereign, the ruler who represents the Nation and is endowed with its authority, has likewise its duties imposed upon him. The care of securing justice to all will therefore be one of the principal duties of the Prince, and nothing is more worthy of his sovereign rank. The Emperor Justinian thus begins the book of the Institutes: "Imperatoriam majestatem non solum armis decoratam, sed etiam legibus oportet esse armatam: ut utrumque

---

(*a*) See an essay upon this subject in "Loisir Philosophique," p. 71 and foll.

tempus, et bellorum et pacis, recte possit gubernari." The degree of power intrusted by the Nation to the head of the State will thus be the measure of his duties in the administration of justice. Just as the Nation has the right to reserve to itself the legislative power or to confide it to a chosen body, so it may, if it see fit, establish a supreme judicial tribunal independent of the Prince. But the ruler of the State should naturally have a considerable share in legislation, and may even be the sole depository of the legislative power. In the latter case it will be his duty to frame salutary laws, such as are dictated by wisdom and justice. In any case he should uphold the laws, watching over those who are endowed with authority and keeping each official within the scope of his duties.

§ 162. How he should administer justice.

The executive power naturally belongs to the sovereign, to every ruler of a Nation, and it is regarded as vested in him to the fullest extent when the fundamental laws impose no limitations. Once, then, the laws are established, it is for the Prince to see that they are observed; and the maintenance of them in full force, and the just application of them to all cases that arise, is what is called the administration of justice. It is the duty of the sovereign, who is naturally the judge of his people. In some small States the rulers themselves perform judicial functions; but this is scarcely convenient or even possible in a great Kingdom.

§ 163. He should appoint honest and enlightened judges.

The best and surest means of administering justice is to appoint honest and enlightened judges to decide differences which may arise between the citizens. The Prince can not possibly take upon himself this difficult work, since he would have neither the necessary time to investigate thoroughly the cases before him nor the requisite legal knowledge to decide them. As the sovereign can not perform in person all the functions of the government, he should reserve to himself, with a wise discretion, those which are the more important and which he can perform with success, and confide the rest to public officials who will perform them under authority from him. There is no objection to confiding the decision of cases in court to a body of wise, honest, and enlightened men; on the contrary, it is the best possible course to pursue, and a prince will have fulfilled his duty to his people when he has given them judges who possess all the qualities belonging to their office. It only remains for the Prince to watch over their conduct and see that they do not grow careless.

§ 164. The ordinary courts should decide cases relating to the public revenue.

The establishment of courts of justice is particularly necessary for the decision of cases which arise between subjects and the revenue officers of the Prince who collect the taxes due him. It would ill become the Prince to wish to be judge in his own cause; he could hardly avoid being influenced by his interests, and even if he could he should not lay himself open to the criticisms of the people. These reasons are grave enough to prevent him from confiding the decision of cases in which he has an interest to ministers and councilors who are closely attached to his person. In all well-regulated States, where the Nation is not under the control of a despot, the ordinary courts have jurisdiction over suits to which the Prince is a party, as unrestrictedly as over those between private citizens.

§ 165. Supreme courts should be established with the right of final decision.

The object of judicial tribunals is to settle justly the differences which arise between the citizens. Hence after cases have been tried before a judge of first instance, who investigates the details and verifies the testimony, it is very proper, for greater security, that the party who obtains adverse judgment should be allowed an appeal to a higher court, which will examine the decision and reverse it if ill-founded. But this higher court must have the right to decide finally and without appeal; otherwise the procedure will be idle and the dispute can never be settled.

The practice of having recourse to the Prince himself, by laying a complaint at the foot of the throne, after the case has been passed upon by the court of last resort, seems to present serious objections. It is easier, by the use of specious arguments, to take the Prince off his guard than to deceive a body of judges learned in the law; and experience proves too well what can be accomplished in the royal court by favor and intrigue. If such a practice is permitted by the laws of the State, the Prince should be always on his guard lest such appeals be brought for the purpose of prolonging a lawsuit and delaying a just sentence. A wise and just sovereign will be cautious in allowing them, and if he reverses the decision complained of he should not judge the case himself, but, as is done in France, should give another court cognizance of it. The ruinous delays consequent upon such appeals make it safe to say that it is better for the State to establish a supreme judicial tribunal, whose decisions can not be reversed even by the Prince. Justice will be sufficiently secured if the sovereign watch over the conduct of the judges and the magistrates, as over that of all public officers, and if he have the power to call to account and punish those who are unfaithful to their trust.

§ 166. The prince should preserve the forms of justice.

Once this supreme court of justice has been established, the Prince can not interfere with its decisions, and in general is absolutely bound to protect and uphold the established forms of justice. Any attempt to violate them would be an arbitrary assumption of power, which it can not be presumed a Nation would willingly submit to.

When the forms have become perverted, it is the duty of the legislator to remodel them. This process, when carried out in accordance with the fundamental laws, will be one of the greatest benefits a sovereign can confer upon his people. To protect the citizens from the danger of having recourse to a disastrous revolution in the defense of their rights and to suppress the vicious practice of chicanery will be regarded by wise men as more worthy of honor than all the exploits of a conqueror.

§ 167. The prince should uphold the authority of the judges and carry out their decisions.

Justice is administered in the name of the sovereign who leaves to the courts the decision of points of law and justice and relies on their efficiency. His duty in this department of government is, therefore, to uphold the authority of the judges and to carry out their judgments; which would otherwise be of no effect, so that justice could not be rendered to the citizens.

§ 168. Attributive justice. Distribution of offices and rewards.

There is another species of justice termed *attributive* or *distributive*. Generally speaking, it consists in treating each one according to his merits. This virtue should regulate the distribution in a State of public offices, honors, and rewards. It is first of all a Nation's duty to itself to encourage worthy citizens, and to stimulate all to good deeds by means of honors and rewards, and to appoint to office only those who will prove efficient. It is also its duty to individuals to give due reward to merit. Although a sovereign may show favor to and appoint to office whom he pleases, and although no one has a perfect right to any post or dignity, still a citizen who has studiously endeavored to fit himself to be of service to his country, or who has done some signal service to the State, may reasonably complain if he is overlooked by the Prince, while others who have done nothing and deserved nothing are preferred before him. Such ingratitude on the part of the Prince is disgraceful and can not but destroy emulation. There is scarcely a vice which can in time become more hurtful to the State; it produces a general carelessness; and public affairs, when in the hands of incapable persons, have small chance of being successfully carried on. A powerful State may run on for a time by its own momentum; but it finally becomes disorganized, and this is perhaps one of the chief causes for the revolutions which have taken place in great Empires. The sovereign is careful in the choice of those whom he employs so long as he feels insecure on his throne and must be on his guard; but as soon as he is in a position of power and has no longer anything to fear, he follows his whim and distributes his appointments by favor.

§ 169. Punishment of criminals; foundation of the right to punish. The punishment of criminals belongs ordinarily to distributive justice, of which, in fact, it forms a part, inasmuch as good order requires that criminals receive the punishment which is their due. But if it be desired to establish the right to punish upon its true basis, we must go back to first principles. This right, which, in the state of nature, belongs to each individual, is based upon the right of personal security. Every man has the right to protect himself from injury, and in doing so to use force against an unjust aggressor. He may thus inflict injury upon his assailant, either to render him incapable of further attacks or to reform him and restrain by his example others who may be tempted to imitate him. Now, when men unite in civil society, the State is thenceforth intrusted with the duty of caring for the security of its members, and they renounce in its favor their right to punish. It, therefore, belongs to the State as public protector to punish private wrongs. Moreover, since the State is a moral person against whom wrongs may be committed, it has the right to see to its own security by punishing those who attack it, that is to say, the State has the right to punish public crimes. From this source comes the right of the sword which belongs to a Nation or to its ruler. In using this right against another Nation it wages war; in using it against an individual it administers *punitive justice*. Two things are to be considered in this department of government—the laws and their execution.

§ 170. Criminal laws. It would be dangerous to leave the punishment of criminals entirely to the discretion of the judicial tribunals. There might be room for passion in a matter where justice and wisdom should alone control. A punishment which is assigned in advance to a given crime has more power to deter the wicked than a vague fear about which they may deceive themselves. Finally, since the suffering of a criminal ordinarily excites pity, the public is much more convinced of the justice of his punishment when the law itself has prescribed it. Every civilized State should therefore have criminal laws. It is the duty of the legislator or legislative body to frame them wisely and justly. But it is not appropriate to describe here the general theory of these laws; we can only state that, in this matter as in every other, each Nation should choose those which are best suited to its circumstances.

§ 171. Extent of punishments. We shall make on this subject but one observation which relates to the extent of punishments. The very source of the right to punish and the lawful reason for its existence require that it be exercised within just limits. Since punishment has for its object to insure the security of the State and of its citizens, it should never be extended beyond what is necessary to that effect. The statement that all punishment is just when the criminal knows in advance the penalties to which he exposes himself is an inhuman assertion contrary to the natural law which forbids our doing injury to others unless they force us to do so in self-defense. Hence, whenever a certain wrongful act is not greatly to be feared in society, when the occasions on which it is committed are rare, and when the citizens are not inclined towards it, it is unwise to attach very severe penalties to its commission. The nature of the offense should be considered, and punishment apportioned to it so far as is necessary to secure the public peace and welfare, and to the extent of the criminal intent it implies.

These principles are not only dictated by reason and justice, but are strongly recommended by a wise statesmanship. Experience shows us that the imagination grows accustomed to objects which are frequently before it. If terrible forms of punishment are multiplied the people will be daily less impressed by them and will finally acquire, like the Japanese, a character of ungovernable brutality; bloody spectacles will thus fail to produce their effect of terrifying the wicked. A parallel result occurs when the sovereign confers titles and distinctions too freely; he depreciates their value and misuses one of the most powerful and convenient instruments of government. When we consider the criminal laws of the Romans, who were so careful in the application of capital punishment, we can not but be struck with the readiness with which it is applied in most of our modern States. Was the Roman Republic badly governed in consequence? Rather we find greater order and security existing in it than we have. It is the strictness with which the law is carried out, more than the severity of penalties, which keeps men from violating it. If mere theft is punished with death, what is there left to secure the lives of the citizens?

§ 172. The execution of the laws.

The execution of the laws belongs to the ruler of the State. He is intrusted with this duty and is indispensably bound to fulfill it wisely. He must, therefore, see that the criminal laws are enforced, but he must not undertake himself to judge the guilty. In addition to the reasons we advanced in speaking of civil cases, reasons which have even more force in criminal cases, it would ill become the position of the sovereign, who is to appear in all things as the father of his people, to assume the character of a judge over criminals. It is a wise and well-established principle in France that the sovereign should reserve to himself the dispensation of favors and leave to his judges the enforcement of justice. But this justice is to be rendered in his name and under his authority. A wise ruler will watch carefully over the conduct of his judges and see that they observe strictly the established forms of justice; and he will be very careful himself not to infringe upon them. Every sovereign who neglects or violates the forms of justice in the prosecution of criminals is on the high road to tyranny. A Nation can not be called free when its citizens have not the assurance that they will be condemned only in accordance with law, under the established forms of justice, and by the ordinary judges. The custom of having the accused person tried by commissioners, appointed at the pleasure of the royal court, was the despotic scheme of certain ministers, who abused the power of their sovereign. By this irregular and unjust form of trial a famous minister always managed to do away with his enemies. A good prince will never allow such a proceeding if he is wise enough to foresee the dreadful use which his ministers may make of it. If the Prince should not himself pronounce judgment, for like reason he may not add to the sentence passed by the judges.

§ 173. The right of granting pardons.

The very nature of government requires that the one who executes the laws shall have the power of making exemptions from them when it can be done without harm to anyone and when in certain special cases the good of the State requires it. The right of granting pardons is thus an attribute of sovereignty. But whether enforcing the law rigorously or applying it mercifully, the sovereign should have in view only the promotion of the public welfare. A wise ruler will know how to reconcile justice and mercy, the care for the security of the people and the charity due to the unfortunate.

§ 174. Public administration.

Public administration consists in the attention of the sovereign and of the public officers to the maintenance of good order in the State. Wise regulations should prescribe whatever will conduce to the security, welfare, and convenience of the public, and those in authority can not show too much care in enforcing them. The sovereign will thus accustom the people to order and obedience, and will preserve peace and harmony among the citizens. The Dutch magistrates are said to possess singular skill in these matters; their towns and even their colonies in the Indies are generally better administered than those of other countries.

Since laws and courts of justice have been substituted for private war, the ruler of a State should not permit individuals to undertake to obtain justice for themselves when they can have recourse to the courts. The practice of dueling, by which persons attempt to settle a private quarrel, is manifestly contrary to public order and the end of civil society. This mania was unknown to the ancient Greeks and Romans, who carried the renown of their arms to distant countries; it has come to us from barbaric tribes who knew no other right than the sword. Louis XIV is deserving of great praise for his efforts to abolish so savage a practice.

§ 175. Duels, or private combats.

But why was it not called to the attention of that Prince that the severest penalties were not sufficient to cure the insane desire for dueling, since they did not go to the root of the evil? Since the nobility and army officers had become possessed with the idea that they were bound in honor to avenge by the sword the least wrong done them, that false principle should have been the ground to work upon. Destroy that idea, or hold it in check by a motive of like nature. So long as a gentleman, by obeying the law, will be regarded by his fellows as a coward; so long as an officer, under like circumstances, is forced to quit the service, the threat of death will not prevent a duel. On the contrary, he will regard it as a point of bravery thus to expose his life doubly to wash out an affront; and indeed, so long as the idea continues that a gentleman or an officer can not decline a duel without casting a shadow over the rest of his life, I do not see how persons who are forced to submit to this tyrannical code of honor can with justice be punished, or even condemned in conscience. A man's honor before the world, however false and unsubstantial it may be, is a very real and very necessary matter to him, since without it he can not live with his equals, nor follow a profession which may often be his only support. When, therefore, an insolent fellow wishes to deprive him of that honor which means so much to him, why may he not defend it, as he would defend his life or his property from a robber? Just as the State does not permit an individual to pursue a thief with drawn sword, because the courts will give him justice, so if the sovereign does not want an individual to draw his sword against one who has insulted him he should necessarily see to it that the citizen who has received an affront shall not suffer by reason of his patience and obedience to the laws. Society can not take from a man his natural right of resistance against an aggressor without giving him some other means of protecting himself against the injuries which others may wish to do him. On all occasions when the public authority can not come to our aid we fall back upon our primitive rights of self-defense. Thus a traveler may kill, without hesitation, a robber who attacks him on the highway; for at that moment recourse to the laws and the courts would be idle. In like manner the act of a virgin would be approved if she killed one who attempted to do violence to her.

§ 176. Means of putting a stop to this abuse.

Until the time comes when men have got rid of that Gothic idea that they are bound in honor to avenge by their own hand their personal injuries, in contempt of the law, the surest means of checking its effects would perhaps be to make a sharp distinction between the one who is insulted and the one who insults him; to freely pardon the former when it should appear that his honor has been actually attacked, and to punish without mercy his aggressor. As for those who draw the sword over mere trifles, for petty quarrels, piques, and jests, where no point of honor is involved, I would have them severely punished. In this way some check might be put upon those quarrelsome and insolent persons who often force the most law-abiding citizens into a duel. Each would then be on his guard to avoid being held the aggressor, and being desirous to gain the advantage of fighting, if it came to that, without incurring the penalties of the law, both parties would be less aggressive, and the quarrel would settle itself without further consequences. Frequently a bully is a coward at heart; he puts on airs, insults others, in the belief that the severity of the laws will force them to put up with his insolence. What happens? A man of spirit will run any risk rather than allow himself to be insulted; the aggressor is ashamed to back down, and a fight results which would never have taken place if the latter had realized that the law, while punishing the offender, permitted the person wronged to avenge the insult with impunity.

To this first law, the efficacy of which I have no doubt experience will demonstrate, it would be well to add the following regulations: (1) Since custom has decreed that the nobility and army officers should wear their swords even in time of peace, the law should be strictly enforced which limits this privilege to those two classes only. (2) It would be wise to establish a special court to deal summarily with all affairs of honor between persons of these two classes. The Marshals' Court of France is already invested with such jurisdiction; it might be given to them in a more formal and comprehensive manner. The governors of provinces and military posts, and their staff officers, the colonel and captains of each regiment, would be, in this instance, delegates of the marshals. These courts, each in its own district, would alone confer the right to wear a sword; every nobleman, at the age of sixteen or eighteen, and every soldier on entering a regiment, would be obliged to appear before the court to receive his sword. (3) In presenting him his sword he should be made to understand that it is given to him only for the defense of his country, and he should be impressed with the right idea of honor. (4) It seems to me that it is a point of great importance to prescribe penalties of a different nature for different cases. Whoever should so far forget himself as to insult, by word or deed, a man who wears a sword, should be degraded from his rank of nobleman or officer and given corporal punishment, or even should be put to death, according to the extent of the injury done; and in accordance with my first rule no favor should be shown him if a duel results, while his adversary should go unpunished. Those who fight on slight provocation should not be condemned to death, except in the single case when the author of the quarrel—I mean the one who first drew his sword or gave a challenge—has killed his adversary. When punishment is too severe men hope to escape it; and besides, capital punishment in such cases is not regarded as a disgrace. Degrade them ignominiously from their rank as noblemen or officers; deprive them, without hope of pardon, of the right of wearing the sword, and you will apply the most effective remedy to restrain men of spirit, provided always that a distinction be made between the parties according to their degree of guilt. As for those who belong neither to the nobility nor to the army, their quarrels should be left to the cognizance of the ordinary courts, and the blood they shed should be avenged according to the ordinary laws against assault and murder. The same rule should be applied to quarrels between commoners and men wearing a sword; the ordinary police magistrate should preserve order and peace between citizens who can not have a private *affaire d'honneur*. To protect the people against the aggressions of those who wear the sword, and to punish them severely if they offer them insult, should continue to be, as it now is, the duty of the magistrate.

I am bold to think that these regulations, if well enforced, would extirpate that vice of dueling which the severest laws have not been able to suppress. They go to the root of the evil by preventing quarrels, and they offset the false and punctilious sense of honor, which has shed so much blood, by a strong sentiment of true and real honor. The task is worthy of a great sovereign; to succeed in it would immortalize his name, and the mere attempt would win for him the love and gratitude of his people.

CHAPTER XIV.

Third Object of a Good Government—to Fortify Itself Against Attacks from Without.

§ 177. A nation should fortify itself against attacks from without.

We have enlarged upon matters which concern the true happiness of a Nation; the field is equally rich and varied. We now come to a third class of duties which a Nation owes to itself, a third object of good government. One of the ends of civil society is to defend itself, by the united forces of its members, from insults and attacks from without (§ 15). If the State is not in a condition to resist an aggressor it is very imperfect; it falls short of its chief object and can not long hold together. To prepare itself to resist and overcome an unjust enemy is an important duty which the care of its prosperity and of its very existence imposes upon it and upon its ruler.

§ 178. The strength of a nation.

It is by its strength that a Nation is able to repel aggressors, secure its rights, and make itself respected everywhere. There is every motive to urge it to neglect no means of enabling itself to accomplish these objects. The strength of a State consists in three things—the number of its citizens, their military valor, and wealth. Under the last heading may be included fortresses, artillery, arms, horses, military stores, and in general the extensive apparatus necessary in modern warfare; for they can all be obtained with money.

§ 179. Increase in the number of citizens.

The State, or its ruler, should therefore give its first care to increasing the number of its citizens, as far as that may be possible or convenient. It will attain this object by creating, as is its duty, a state of plenty throughout the country, by enabling its citizens to support their families by their labor, by enacting proper regulations to prevent its weaker subjects, and above all the laboring class, from being burdened or harassed by the imposition of taxes, by governing with mildness and in such a manner as to attract new subjects rather than dissatisfy and drive out those it has, and finally by encouraging marriage after the example of the Romans. We have already observed (§ 149) that a Nation which is seeking every means of maintaining and increasing its power makes wise laws against celibacy and grants privileges and exemptions to married persons, especially to those who have large families. Such laws are both wise and just, since a citizen who rears subjects for the State may reasonably expect favors not granted to those who live only to themselves.

In a State which is not overflowing with inhabitants, whatever tends to depopulate it is an evil. We have already spoken of monasteries and of the practice of celibacy by priests. It is strange that institutions directly contrary to the duties of a man and of a citizen, and to the welfare and safety of society, should have found such favor, and that sovereigns, far from opposing them, as they should, have protected and enriched them. A politician who knew how to profit by superstition to extend his power caused States and their subjects to mistake their real duties and blinded princes even to their own interests. Experience finally opened the eyes of Nations and their rulers; the Pope himself, let us say it to the honor of Benedict XIV, is seeking to reduce gradually so evident an abuse. He has decreed that no one in his States shall be allowed to take vows of celibacy before the age of twenty-five years. This wise pontiff gives a salutary example to the sovereigns of his communion; he calls upon them to at least give their attention to the welfare of their States and to narrow the channels which are draining them, if they can not close those channels altogether. Look at Germany, and there, in countries which are otherwise entirely alike, it will be found that Protestant States are twice as populous as Catholic ones; compare the barren condition of Spain to that of England, which is teeming with inhabitants; look at the fair provinces, even in France, which have no one to cultivate them; and say whether the thousands of men and women in convents would not serve God and their country far better by furnishing these rich fields with laborers. It is true that the Catholic cantons of Switzerland are nevertheless very populous, but this is because the existence of profound peace and the character of the Government repair abundantly the losses caused by convents. Liberty can remedy the greatest evils; it is the vital spirit of a State, and it was with good reason called by the Romans *alma libertas*.

§ 180. Valor. A cowardly and undisciplined multitude can not repel a warlike enemy. The strength of the State consists less in the number than in the military virtues of its citizens. Valor, that heroic virtue which leads men to face danger for the defense of their country, is the firmest support of a State, making it formidable to its enemies and sparing it the necessity of defending itself. Once a Nation has established its reputation in this respect, it will rarely be attacked if it gives no provocation. For two centuries the Swiss have enjoyed profound peace, while the din of arms has resounded about them and war has laid waste the rest of Europe. Valor is a gift of nature, but various causes may increase it or may weaken and even destroy it. A Nation should therefore endeavor to cultivate so useful a virtue, and a wise sovereign will take every means of instilling it into his subjects. What those means are he will of his own wisdom discover. This noble fire of valor animates the French nobility; inspired with a love of glory and of their country, they rush to battle and gladly shed their blood on the field of honor. To what an extent would it not carry its conquests if the Kingdom were surrounded by Nations less warlike? The English, generous and fearless, are like a lion in the fight; and on the whole the Nations of Europe surpass in bravery all the peoples of the world.

§ 181. Other military virtues. But valor alone is not always sufficient in warfare; the whole body of military virtues are needed for unfailing success. History shows us how important are good generalship, military discipline, frugality, strength of body, dexterity, and habituation to fatigue and labor. They are all distinct qualities which a Nation ought to cultivate with care. It was these virtues which won such great renown for the Romans and made them masters of the world. It would be a mistake to think that valor alone was the cause of those brilliant deeds of the ancient Swiss, the victories of Margarten, Sempach, Laupen, Marat, and numerous others. The Swiss not only fought bravely; they studied the art of warfare, they hardened themselves to labor, they trained themselves to execute all manner of maneuvers, and out of their very love for liberty they submitted to the discipline which alone could secure them that treasure and save the country. Their armies were not less noted for their discipline than for their bravery. Mezeray, after relating what the Swiss accomplished at the battle of Dreux, adds these striking words: "In the opinion of all the officers on both sides who were there, the Swiss on that day, under every sort of test, against infantry and cavalry, against French and Germans, won the palm for military discipline, and the reputation of being the best infantry in the world."(*a*)

(*a*) Histoire de France, Tom. II, p. 888.

§ 182. **Wealth.**

Finally, the wealth of a Nation constitutes a considerable part of its power, especially in these days when war calls for such enormous expenditures. It is not limited to the revenues of the sovereign or to the public funds; the wealth of a Nation is also estimated by the riches of its individual citizens. A Nation is commonly said to be wealthy when a great number of its citizens have either a comfortable or a large income. The property of individual citizens really increases the strength of the State; for these individuals can contribute large sums to the public needs, and in the last resort the sovereign can put to use all the wealth of the subjects for the defense and safety of the State, by the right of *eminent domain* which belongs to him, as we shall explain later on. A Nation should therefore endeavor to acquire the public and private wealth so useful to it; and we have here a further reason for developing foreign commerce, which produces wealth; and a new reason why the sovereign should watch carefully over the entire foreign commerce of his people, so as to maintain and protect those branches of it which are profitable, and cut off those which draw away gold and silver.

§ 183. **Public revenues and taxes.**

A State must have revenues proportionate to the expenditures it is obliged to make. These revenues can be obtained from several sources, from the lands owned by the State, from contributions, from taxes of various kinds, etc. We shall treat elsewhere of this subject.

§ 184. **A nation should not increase its strength by unjust means.**

The three factors we have just discussed constitute the national strength which a State should endeavor to increase and develop. Need we observe that in doing so it can only use just and innocent means? A laudable end can not justify any means; they must be legitimate in themselves. The natural law can not be contradictory; if it forbids a certain action as being intrinsically unjust or dishonest it can not permit that action, whatever be the end in view. Hence in any case in which a good and laudable end can not be attained without the use of unlawful means, the end should be regarded as unattainable and should be abandoned. Thus we shall show, when treating of the just causes of war, that one Nation may not lawfully attack another with the object of advancing itself by subjecting the latter to its laws. It is as if an individual should seek to enrich himself by stealing his neighbor's goods.

§ 185. **National strength is a relative matter.**

A Nation's strength is a relative question; it is to be measured by that of neighboring Nations, or by that of all the Nations from whom it has anything to fear. A State is powerful enough when it is able to make itself respected and to repel any attacks which may be made upon it. It can place itself in this happy situation either by keeping its own forces upon a level or above those of its neighbors, or by preventing the latter from acquiring a position of predominant power. We can not point out here under what circumstances and by what means a State may with justice limit the power of another State; we must first explain the duties of a Nation towards others, in order to combine them afterwards with its duties towards itself. For the present we merely observe that a State, while following in this respect the rules of prudence and sound policy, should never lose sight of those of justice.

CHAPTER XV.

National Renown.

§ 186. Advantages of renown. The renown of a Nation is intimately connected with its power and forms an important part of it. This noble possession wins for it the esteem of other Nations and makes it respectable in the eyes of its neighbors. A Nation whose reputation is well established, and especially one whose renown is illustrious, finds itself courted by all sovereigns; they desire its friendship and fear to offend it; its friends, and those who hope to become so, favor its undertakings, and its enemies dare not manifest their ill-will.

§ 187. Duty of the nation in this respect; how true renown is acquired. It is, therefore, of great advantage to a Nation and is one of its most important duties towards itself, to make itself renowned. True renown consists in the good opinion which wise and enlightened men have of us. It is acquired by virtues or good qualities of mind and heart, and by good deeds which are the fruit of those virtues. A Nation may deserve to be renowned for two reasons: Firstly, because of its acts as a Nation, which result from the conduct of those who are at the head of the government and administer its affairs; secondly, because of the merit of the individuals who make up the Nation.

§ 188. Duty of the sovereign. The sovereign of a State, whatever be his title, owes his whole service to the Nation, and is therefore evidently obliged to increase its renown as far as lies in his power. We have seen that it is his duty to labor for the advancement of the State and of its individual citizens who are his subjects; he will thus win for it renown. He should have this object continually before his eyes in all that he undertakes and in whatever use he makes of his power. Let him exhibit justice, moderation, and greatness of soul in all his actions, and he will win for himself and his people an honorable name before the world, and one not less useful than respected. The renown of Henry IV saved France. In the wretched state in which he found affairs he inspired the loyal subjects by his virtue, and made foreign nations bold enough to assist him, by their alliances, against the ambitions of Spain. A weak prince of little renown would have been abandoned by everyone; men would have feared becoming involved in his ruin.

In addition to the virtues which are the glory of princes as of private individuals there is a dignity and a deportment which belong particularly to the rank of the sovereign, and of which he should be particularly mindful. He may not neglect them without demeaning himself and bringing discredit upon the State. Every act of the sovereign should bear a character of purity, nobleness, and greatness. What sort of an idea would a people have of their sovereign if they should see him exhibit in his public acts a baseness of motive by which a private citizen would think himself disgraced? All the honor of the Nation resides in the person of the sovereign; what will there be left of it if he brings reproach upon it, or suffers others to do so who speak and act in his name? The minister who speaks for his master in a manner unworthy of him deserves to be ignominiously dismissed from office.

§ 189. Duty of the citizens. The reputation of individuals, by our ordinary and natural way of speaking and thinking, reflects upon the Nation. In general, vices or virtues are attributed to a Nation when they are frequently noted in its citizens. A Nation is said to be warlike when it has produced a large number of brave soldiers, or to be scholarly when there are many learned men among its citizens, or to be artistic when it contains many skillful artists. On the other hand, we say that it is cowardly, lazy, or stupid when persons of that character are to be found there in larger numbers than elsewhere. Since citizens are bound to do all in their power to promote the welfare and advancement of their country, they have not only a duty towards themselves of meriting a good reputation, but a like duty towards the Nation with whose renown their own is so intimately bound up. Bacon, Newton, Descartes, Leibnitz, and Bernoulli brought honor to their country and were of service to it by the renown which they acquired. The great ministers and generals, Oxenstiern, Turenne, Marlborough, and Ruyter, were of twofold service to their country by their deeds and by their renown. On the other hand, good citizens should find a new motive for refraining from every disgraceful act in the fear of the dishonor which may be brought upon their country. The sovereign should not permit his subjects to give themselves up to vices which can bring shame upon the Nation or even tarnish the brightness of its glory. He has the right to check and punish scandalous affairs, which are a real injury to the State.

§ 190. Example of the Swiss.

The example of the Swiss is well adapted to showing how useful renown may prove to a Nation. The high reputation for valor which they have acquired, and which they honorably maintain, has enabled them to enjoy peace for more than two centuries, and has made their friendship desired by all the Powers of Europe. Louis XI, while Dauphin, witnessed their wonderful valor at the battle of St. Jaques, near Basle, and from that moment conceived the plan of forming a close alliance with so brave a Nation.(*a*) The twelve hundred heroes who on that day attacked an army of between fifty and sixty thousand men first defeated the advance guard of the Armagnacs, eighteen thousand strong, then rashly attacking the main body of the army, they perished almost to a man,(*b*) without being able to win the victory. But in addition to terrifying the enemy and saving the Swiss from a disastrous invasion, they were of service to their country by the renown which they won for its arms. The reputation for an inviolable sense of honor has not been less helpful to that country; consequently it has always been jealous to maintain it. The Canton of Zug put to death the faithless soldier who violated the confidence of the Duke of Milan and betrayed that prince to the French at the time when, in order to escape the French, the duke had put on the Swiss uniform and had joined their ranks as they were leaving Novara.(*c*)

§ 191. To attack a nation's honor is to do it an injury.

Since a Nation's renown is a very real advantage, it has the right to defend that renown as it would any other possession. He who attacks its honor does it a wrong, and reparation can be exacted even by force of arms. We can not, therefore, condemn the measures sometimes taken by sovereigns to uphold or avenge the honor of their crown. They are both just and necessary, and to attribute them to mere pride, except when too lofty pretensions are made, is to be grossly ignorant of the art of ruling and to undervalue one of the strongest bulwarks of the greatness and safety of a State.

(*a*) See the *Mémoires de Commines.*

(*b*) Of this small army "eleven hundred and fifty-eight were killed and thirty-two wounded. Only twelve men escaped, and they were regarded by their fellow countrymen as cowards for having preferred a life of shame to the glory of dying for their country." (*Histoire de la Confédération Helvétique,* by de Watteville, Vol. I, p. 250; Tschudi, p. 425.)

(*c*) Vogel, *Traité historique et politique des alliances entre la France et les* XIII *Cantons,* pp. 75, 76.

CHAPTER XVI.

Voluntary Submission of a State to a Foreign Power in Order to Obtain Protection.

§ 192. Protection. When a Nation is unable to protect itself from insult and oppression, it may obtain for itself the protection of a more powerful State. If this protection is obtained by a promise to do certain definite things, such as to pay tribute in acknowledgment of the protection granted, or to furnish the protecting State with troops, or even to make common cause with it in all its wars, provided the contracting State reserves the right of governing itself, the treaty is merely one of protection, which is not in derogation of sovereignty, and which is distinguished from ordinary treaties of alliance only by the difference which it creates in the standing of the contracting parties.

§ 193. Voluntary submission of one nation to another. But a further step is sometimes taken, and while a Nation should cling tenaciously to the liberty and independence which belong to it by nature, still, when its own strength is not sufficient, and it realizes that it is unable to resist its enemies, it may lawfully subject itself to another more powerful State upon certain conditions which they may agree upon; and the compact or treaty of submission will be for the future the measure and rule of their respective rights; for the Nation which thus subjects itself, and gives up certain rights which belong to it and transfers them to the other, has the absolute right of putting such conditions upon the transfer as it shall see fit, and the other, in accepting the subjection upon those terms, binds itself to observe them religiously.

§ 194. Various forms of submission. This submission may take various forms, according to the agreement of the contracting parties. It may either leave to the weaker State a part of its sovereignty, and merely restrict it in certain respects, or it may destroy it altogether, so that the stronger State will become sovereign of the other; or finally, the agreement may incorporate the weaker State into the stronger, so that thereafter the two shall form one and the same State, and the citizens of the incorporated State shall have all the rights of the citizens to whom they are united. We find in the history of Rome examples of these three forms of submission: (1) The allies of Rome, such as the Latins were for a long time, who depended upon Rome in various ways, and yet governed themselves according to their own laws and by their own public officers; (2) the countries reduced to Roman provinces, such as Capua, whose inhabitants submitted absolutely to Rome;(*a*) (3) finally, the Nations to whom Rome granted the right of citizenship. In after years the Emperors conferred this right upon all the Nations subject to the Empire, and thus transformed all of its subjects into citizens.

§ 195. Rights of the citizens when the nation subjects itself to a foreign power. In the case of a real subjection to a foreign power, citizens who do not approve of the transfer of sovereignty are not bound to submit to it; they should be allowed to sell their property and betake themselves elsewhere. The fact of having entered into a civil society does not bind one to follow its lot when it dissolves itself in order to be subject to foreign control. I submitted to the society such as it was when I entered it, with the intention of living in that society and not in another, and of being a member of a sovereign State. Hence I owe it obedience so long as it remains a body politic; when it divests itself of that character and receives the law of another State, it breaks the bonds which unite its members and releases them from their engagements.

(*a*) Itaque populum Campanum, urbemque Capuam, agros, delubra Deum, divina humanaque omnia, in vestram, Patres Conscripti, Populique Romani ditionem dedimus. (Livy, Bk. VII, Ch. 31.)

§ 196. These compacts are annulled if protection is not given.

When a Nation has put itself under the protection of another more powerful one, or has even subjected itself to another with the object of obtaining protection, if the latter does not protect it effectively when the occasion arises, it is clear that this failure to abide by the agreement cancels all the rights acquired by it, and that the subject State, being released from the obligations it contracted, re-enters upon the rights it gave up and recovers its independence or its liberty. It must be noted that this holds good even in case the protector fail to carry out the agreement from mere inability, and not from bad faith; for the weaker Nation subjected itself only to obtain protection, and if the other is unable to fulfill that essential condition, the agreement is broken; the weaker resumes its rights and may, if it so choose, seek a more efficacious protection.(*a*) Such a case occurred when the Dukes of Austria, who had acquired a right of protection and of limited sovereignty over the city of Lucerne, were unwilling or unable to protect it efficaciously; the city contracted an alliance with the three leading cantons, and when the Dukes carried their complaint to the Emperor the citizens replied "that they had made use of the natural and common right of all men, which permits everyone to look to his own safety when he is forsaken by those who should have helped him."(*b*)

§ 197. Or if the protected state fail in its obligations.

The law binds both of the contracting parties equally. If the protected State does not carry out faithfully its part of the agreement, the protecting State is no longer bound by its reciprocal duties and may refuse protection for the future and declare the treaty void, if it deem it to its advantage to do so.

§ 198. Or if the protector usurps an authority not granted.

By force of the same principle of law which releases one of the contracting parties when the other fails to carry out the agreement, if the stronger power should endeavor to exercise a greater authority over the weaker State than the treaty of protection or of submission confers, the latter may consider the treaty broken and provide for its safety as it thinks best. Without this right the weaker State might be brought to its ruin by the very treaty which it entered into for its welfare, and if it were still bound by its part of the agreement, in spite of the open violation of the corresponding obligations of the protecting State, the treaty would be no more than a snare. However, as there are those who pretend that in such a case the weaker State would only have the right to resist and to ask for help from others, and as the weak can not take too great precautions against the strong, who are skillful in concealing their designs, the surest step is to insert in a treaty of this character a binding clause declaring it null and void if the stronger State should attempt to exercise a greater authority than the treaty expressly confers upon it.

§ 199. The rights of the protected state may be lost by silence.

But if the Nation which is protected, or which has placed itself in subjection upon certain conditions, does not resist the encroachments of the power from which it has sought support, if it makes no opposition, and keeps absolutely silent when it could and should speak, its acquiescence constitutes, in course of time, an implied consent which legalizes the acts of the usurper. There would be no stability in the affairs of men, and above all of Nations, if long possession, accompanied by the silence of the interested parties, did not support a claim of right. But it must be observed that, to constitute an implied consent, the silence must be voluntary. If the weaker Nation can show that the apparent absence of opposition was due to the use of force against it, no inferences can be drawn from its silence and no rights can accrue to the usurper.

(*a*) We are here speaking of a Nation which has become subject to another, without becoming incorporated into it so as to form part of it. In the latter case no rights survive except those common to citizens of the incorporating State. We shall speak of these in the following chapter.

(*b*) See the Historians of Switzerland.

CHAPTER XVII.

How a City or Province May Separate from the State of which it Forms a Part, or Renounce Allegiance to its Sovereign, when It Is Not Protected.

§ 200. Distinction between the present case and those of the preceding chapter.

We have said that an independent Nation which, without becoming part of another State, has placed itself in voluntary dependence upon or subjection to it in order to obtain protection, is released from its engagements as soon as protection is no longer given it, even though this should happen from no other fault than the mere inability of the protector. It must not be inferred that the principle holds good for a city or a province which is not promptly and effectually protected by its natural sovereign or by the State of which it forms a part. The two cases are quite different. In the first, a free Nation becomes subject to another State not for the purpose of sharing all the other's advantages, and making common cause with it, for if the latter were willing to confer this favor the weaker State would be incorporated, not subjected; but it sacrifices its liberty with the sole object of being protected, and looks for no other return. When, therefore, the sole and necessary condition of its subjection is not fulfilled, whatever be the cause, it is released from its obligations and must seek, in justice to itself, some new means of providing for its safety. But as the several parts of an individual State share equally all the advantages it offers, they are bound to stand by it with constancy; for they have agreed to remain united and to make common cause on all occasions. If those which are threatened or attacked might separate themselves from the others to avoid a present danger, every State would soon become dismembered and brought to ruin. Hence it is essential to the safety of the State, and even to the welfare of its members, that each part resist the common enemy with all its power rather than detach itself from the others, and such united action is therefore one of the necessary conditions of civil society. The natural subjects of a prince are bound to him without other conditions than his observance of the fundamental laws; they must remain faithful to him just as he must take care to govern them well; his and their interests are common, and together they form one and the same social body. Hence it is a further essential and a necessary condition of civil society that subjects remain united to their sovereign as long as it is in their power to do so.

§ 201. Duty of the parts of a state, or the subjects of a prince, when they are in danger.

When, therefore, a city or a province is threatened or is actually attacked, it may not, in order to escape danger, separate from the State of which it forms a part, or abandon its legitimate sovereign, even when they are unable to give it effective help at the moment. Its duty and the contract of civil society oblige it to make every effort not to change its political status. If it is overcome by force, then the irresistible law of necessity releases it from its former obligations and gives it the right to treat with the conqueror in order to obtain the best terms it can. If it must either submit to him or be destroyed, who can doubt but that it not only may, but must, choose the former alternative. Modern usage conforms to this decision. A city submits to the enemy when it can not hope to succeed by a vigorous resistance, and if it thus takes a new oath of allegiance, its sovereign has only fortune to blame.

§ 202. Their right when they are abandoned.

The State is bound to defend and protect all its members (§ 17), and the sovereign owes a like duty to his subjects. If they refuse or fail to help a part of the Nation which is exposed to imminent danger, this body of the people, being thus abandoned, has full right to provide for its safety and welfare as best it can, without any consideration for those who have been first neglectful of it. When the country of Zug was attacked by the Swiss in 1352, it appealed to the Duke of Austria, its sovereign, for help. But this Prince, who was conversing about his falcons when the deputies were presented to him, scarcely gave them a hearing. The people of Zug, being thus abandoned, joined the Helvetic Confederacy.(*a*) The town of Zurich found itself in the same situation the year before. Being attacked by certain rebel citizens who were supported by the nobility of the neighborhood and by the House of Austria, it appealed to the head of the Empire. But Charles IV, who was then Emperor, told the deputies that he could not defend the town, and Zurich obtained security by an alliance with the Swiss.(*b*) It was for a like reason that the Swiss as a body broke away from the Empire, which had never protected them in any emergency. Its authority had already been rejected for many years when the independence of Switzerland was recognized by the Emperor and by all the German States in the Treaty of Westphalia.

(*a*) See Etterlin, Simler, and de Watteville, *ubi supra.*

(*b*) See the same historians, and Bullinger, Stumpf, Tschudi, Stettler.

CHAPTER XVIII.

Occupation of Territory by a Nation.

§ 203. The settlement of territory by a nation.

Thus far we have considered a Nation merely in its political character without regard to the country it inhabits. Let us now regard it as settled in a country which thus becomes its own property and the seat of its national life. The earth belongs to all mankind; and being destined by the Creator to be their common dwelling-place and source of subsistence, all men have a natural right to inhabit it and to draw from it what is necessary for their support and suited to their needs. But when the human race became greatly multiplied in numbers the earth was no longer capable of supporting its inhabitants without their cultivating its soil, and this cultivation could not be carried on properly by the wandering tribes having a common ownership of it. Hence it was necessary for these tribes to settle somewhere and appropriate to themselves certain portions of the earth, in order that, without being disturbed in their labor or deprived of its fruits, they might endeavor to render those lands fertile and thus draw their subsistence from them. Such must have been the origin, as it is the justification, of the rights of *property* and *ownership*. Since their introduction, the common right of all men is restricted in the individual to what he lawfully possesses. The territory which a Nation inhabits, whether the Nation moved into it as a body, or whether the families scattered over the territory came together to form a civil society, forms a national settlement, to which the Nation has a private and exclusive right.

§ 204. Rights of a nation over the territory it occupies.

This right contains two elements: (1) *Ownership*, by virtue of which that Nation only may make use of the territory for its needs, may dispose of it, and draw whatever benefits it may yield; (2) *sovereignty*, or the right of supreme jurisdiction, by which the Nation regulates and controls at will whatever goes on in the territory.

§ 205. Acquisition of sovereignty over unoccupied territory.

When a Nation takes possession of a country which belongs to no one, it is considered as acquiring *sovereignty* over it as well as *ownership;* for, being free and independent, it can not intend, when it settles a territory, to leave to others the right to rule it, nor any other right which belongs to sovereignty. The entire space over which a Nation extends its sovereignty forms the sphere of its jurisdiction, and is called its *domain.*

§ 206. Another manner of acquiring sovereignty over unoccupied territory.

If a number of free families, scattered over an independent country, come together to form a Nation or State, they acquire as a body sovereignty over the entire territory they inhabit; for they were already owners of their individual parts of the territory, and since they desire to form together a civil society and set up a public authority which each must obey, it is clear that they mean to confer upon this public authority the right to rule the whole country.

§ 207. How a nation appropriates unoccupied territory.

All men have an equal right to things which have not yet come into the possession of anyone, and these things belong to the person who first takes possession. When, therefore, a Nation finds a country uninhabited and without an owner, it may lawfully take possession of it, and after it has given sufficient signs of its intention in this respect, it may not be deprived of it by another Nation. In this way navigators setting out upon voyages of discovery and bearing with them a commission from their sovereign, when coming across islands or other uninhabited lands, have taken possession of them in the name of their Nation; and this title has usually been respected, provided actual possession has followed shortly after.

§ 208. Difficulty upon this point.

But it is questioned whether a Nation can thus appropriate, by the mere act of taking possession, lands which it does not really occupy, and which are more extensive than it can inhabit or cultivate. It is not difficult to decide that such a claim would be absolutely contrary to the natural law, and would conflict with the designs of nature, which destines the earth for the needs of all mankind, and only confers upon individual Nations the right to appropriate territory so far as they can make use of it, and not merely to hold it against others who may wish to profit by it. Hence the Law of Nations will only recognize the *ownership* and *sovereignty* of a Nation over unoccupied lands when the Nation is in actual occupation of them, when it forms a settlement upon them, or makes some actual use of them. In fact, when explorers have discovered uninhabited lands through which the explorers of other Nations had passed, leaving some sign of their having taken possession, they have no more troubled themselves over such empty forms than over the regulations of Popes, who divided a large part of the world between the crowns of Castile and Portugal.(*a*)

§ 209. Whether it is lawful to occupy a portion of a territory in which there are only wandering tribes in small numbers.

There is another celebrated question which has arisen principally in connection with the discovery of the New World. It is asked whether a Nation may lawfully occupy any part of a vast territory in which are to be found only wandering tribes whose small numbers can not populate the whole country. We have already pointed out (§ 81), in speaking of the obligation of cultivating the earth, that these tribes can not take to themselves more land than they have need of or can inhabit and cultivate. Their uncertain occupancy of these vast regions can not be held as a real and lawful taking of possession; and when the Nations of Europe, which are too confined at home, come upon lands which the savages have no special need of and are making no present and continuous use of, they may lawfully take possession of them and establish colonies in them. We have already said that the earth belongs to all mankind as a means of sustaining life. But if each Nation had desired from the beginning to appropriate to itself an extent of territory great enough for it to live merely by hunting, fishing, and gathering wild fruits, the earth would not suffice for a tenth part of the people who now inhabit it. Hence we are not departing from the intentions of nature when we restrict the savages within narrower bounds. However, we can not but admire the moderation of the English

---

(*a*) As these remarkable decrees are only to be found in somewhat rare books, it will be acceptable to find here an extract from them.

Bull of Alexander VI, by which he gives to Ferdinand and Isabella, King and Queen of Castile and Arragon, the new world discovered by Christopher Columbus.

"Motu proprio," says the Pope, "non ad vestram, vel alterius pro vobis super hoc nobis oblatæ petitionis instantiam, sed de nostra mera liberalitate, et ex certa scientia, ac de apostolicæ potestatis plenitudine, omnes insulas et terras firmas, inventas et inveniendas, detectas et detegendas, versus occidentem et meridiem" (drawing a line from pole to pole at a hundred leagues west of the Azores), "auctoritate omnipotentis Dei nobis in beato Petro concessa, ac vicariatus Jesu Christi, qua fungimur in terris, cum omnibus illarum dominiis, civitatibus, etc., vobis hæredibusque et successoribus vestris, Castellæ et Legionis regibus, in perpetuum tenore præsentium donamus, concedimus, assignamus, vosque et hæredes ac successores præfatos, illorum dominos, cum plena, libera et omnimoda potestate, auctoritate, et jurisdictione, facimus, constituimus, et deputamus." The Pope makes exception only of those lands which some other Christian prince might have occupied before the year 1493; as if he had a greater right to confer lands which belonged to no one, and particularly those in possession of the native American races. He continues thus: "Ac quibuscunque personis cujuscunque dignitatis, etiam imperialis et regalis, statûs, gradûs, ordinis, vel conditionis, sub excommunicationis latæ sententiæ pœnâ, quam eo ipso, si contra fecerint, incurrant, districtius inhibemus ne ad insulas et terras firmas, inventas et inveniendas, detectas et detegendas, versus occidentem et meridiem . . . pro mercibus habendis, vel quavis alia de causa accedere præsumant absque vestra, ac hæredum et successorum vestrorum prædictorum licentia speciali, etc. Datum Romæ apud S. Petrum anno 1493, IV nonas Maii, Pontific. nostri anno primo." (Leibnitz, *Codex Juris Gent. Diplomat. Diplom.* 203.) See *ibid.* (*Diplom.* 165), the bull by which Nicholas V gave to Alphonso, King of Portugal, and to Prince Henry the sovereignty over Guinea, and the right to subdue the uncivilized tribes of those countries, forbidding any other persons to go there without permission from Portugal. The bull bears the date of January 8, 1454, at Rome.

Puritans who were the first to settle in New England. Although they bore with them a charter from their sovereign, they bought from the savages the lands they wished to occupy.(*a*) Their praiseworthy example was followed by William Penn and the colony of Quakers that he conducted into Pennsylvania.

§ 210. Colonies. When a Nation takes possession of a distant country and establishes a colony there, that territory, though separated from the mother country, forms naturally a part of the State, as much so as its older possessions. Hence, whenever the public laws or treaties make no distinction between them, all regulations affecting the mother country should be extended equally to the colonies.

(*a*) Histoire des Colonies Angloises de l'Amérique septentrionale.

CHAPTER XIX.

One's Country, and Various Matters Relating to It.

§ 211. What constitutes one's country. All the lands inhabited by a Nation and subject to its laws form, as we have said, its domain, and are the common country of its citizens. We have been obliged to anticipate the definition of the term *one's country* (§ 122), in treating of the love of country, that noble virtue so necessary in a State. Presuming, therefore, that definition to be known, we shall proceed to explain certain matters connected with the subject and to clear up the difficulties it presents.

§ 212. Citizens and natives. The members of a civil society are its citizens. Bound to that society by certain duties and subject to its authority, they share equally in the advantages it offers. Its *natives* are those who are born in the country of parents who are citizens. As the society can not maintain and perpetuate itself except by the children of its citizens, these children naturally take on the status of their fathers and enter upon all the latter's rights. The society is presumed to desire this as the necessary means of its self-preservation, and it is justly to be inferred that each citizen, upon entering into the society, reserves to his children the right to be members of it. The country of a father is therefore that of his children, and they become true citizens by their mere tacit consent. We shall see presently whether, when arrived at the age of reason, they may renounce their right and the duty they owe to the society in which they are born. I repeat that in order to belong to a country one must be born there of a father who is a citizen; for if one is born of foreign parents, that land will only be the place of one's birth, and not one's country.

§ 213. Residents. *Residents*, as distinguished from citizens, are aliens who are permitted to take up a permanent abode in the country. Being bound to the society by reason of their dwelling in it, they are subject to its laws so long as they remain there, and, being protected by it, they must defend it, although they do not enjoy all the rights of citizens. They have only certain privileges which the law, or custom, gives them. *Permanent residents* are those who have been given the right of perpetual residence. They are a sort of citizens of a less privileged character, and are subject to the society without enjoying all its advantages. Their children succeed to their status; for the right of perpetual residence given them by the State passes to their children.

§ 214. Naturalization. A Nation, or the sovereign who represents it, may confer citizenship upon an alien and admit him into the body politic. This act is called *naturalization*. There are some States in which the sovereign can not grant to an alien all the rights of citizens; for example, that of holding public office; so that he has only authority to grant an imperfect naturalization, his power being limited by the fundamental law. In other States, as in England and Poland, the sovereign can not naturalize aliens without the concurrence of the representative assembly. Finally, there are others, such as England, in which the mere fact of birth in the country naturalizes the children of an alien.

§ 215. Children of citizens, born abroad. It is asked whether the children born of citizens who are in a foreign country are citizens. The question has been settled by law in several countries, and such provisions must be followed. Arguing from the natural law, children follow the status of their parents and enter upon all their rights (§ 212); place of birth does not affect the rule and can not of itself afford any reason for depriving a child of a right given him by nature; I say *of itself*, for the civil law may, with a special object in view, provide otherwise. I am supposing that the father has not entirely given up his country with the intention of taking up his abode elsewhere. If he has his domicile in a foreign country he has become a member of another State, at least in the character of a perpetual resident, and his children will be members of the same State.

§ 216. Children born at sea. As for children born at sea, if born in those parts which are subject to the jurisdiction of their Nation, they are born in the State; if born on the high seas, there is no reason for making any distinction between them and children born within the State, for it is not place of birth which by the Law of Nature confers rights, but parentage. If children are born on a vessel belonging to the Nation they may be considered as born within its territory; for it is natural to regard the vessels of a Nation as portions of its territory, especially when they are upon the high seas, since the State retains jurisdiction over them; and since by common custom this jurisdiction over the vessel is retained even when the vessel is in waters subject to the jurisdiction of another State, all children born upon the vessels of a Nation are considered as born within its territory. For the same reason children born on a foreign vessel are considered as born in a foreign country, unless they are actually born in a port of the Nation; for a port is in a peculiar way part of the national territory, and the mother, because of her being for the moment on a foreign vessel, is not out of the country. I am supposing that she and her husband have not left the country to live elsewhere.

§ 217. Children born in the armies of the state, or in the house of its minister at a foreign court For the same reasons, children of citizens, when born outside of the country, in the armies of the State or in the house of its minister at a foreign court, are considered as born in the country; for when a citizen is abroad with his family, in the service of the State, and is subject to its authority and jurisdiction, he can not be considered as having left his country.

§ 218. Domicile. *Domicile* is a fixed residence in a certain place with the intention of permanently remaining there. Hence a man does not establish a domicile in a place unless he has given sufficient signs, whether impliedly or by express declaration, of his intention to remain there. However, this declaration does not prevent him from changing his mind later on and transferring his domicile elsewhere. In this sense a person who, because of his business, remains abroad even for a long time, has only a mere residence there, without *domicile*. In like manner an ambassador of a foreign prince is not domiciled at the court where he resides.

Natural domicile, or domicile *of birth*, is that which birth confers upon us, and is in the place where our father has his; and we are considered as retaining it, so long as we do not give it up in order to adopt another. *Acquired domicile* (*adscititium*) is that which we take up of our own free choice.

§ 219. Vagrants. *Vagrants* are persons without a domicile. Consequently children of vagrant parents belong to no country; for a man's country is the place where, at the time of his birth, his parents had their domicile (§ 122), or the State of which his father was then a member, which amounts to the same thing, since by settling permanently in a State one becomes a member of it, if not with all the rights of a citizen, at least as a perpetual resident. Nevertheless, in so far as a vagrant may be considered as not having absolutely renounced his domicile by birth, his child may be held to be of the same country to which he belongs.

§ 220. Whether a man may expatriate himself. In passing upon the celebrated question whether a man may expatriate himself, we shall have to make several distinctions:

(1) There is a natural bond between children and the society in which they are born; they are bound to recognize the protection their fathers have received

from it, and they are indebted to it in great part for their birth and their education. Hence they must love their country, as we have already pointed out (§ 122); they must show it due gratitude, and as far as they are able, requite its benefits. We have just remarked (§ 212) that they have the right to enter into the society of which their fathers were members. But every man is born free, and therefore the son of a citizen, when arrived at the age of reason, may consider whether it is well for him to join the society in which he happens to be by birth. If he does not find that it is to his advantage to remain in it, he has the right to leave it, though he should recompense it for what it may have done for him,(*a*) and retain, as far as his new engagements will permit, the sentiments of love and gratitude which are due to it. However, a man's obligations towards the country of his birth will be greater or less, or may not exist at all, according as he shall have left it lawfully and with reason, in order to choose another, or shall have been banished from it deservedly or unjustly, in lawful manner or by violence.

(2) As soon as the child of a citizen, on reaching manhood, acts as a citizen, he impliedly assumes that character, and his obligations, like those of others who in an express and formal manner bind themselves to the society, become of greater extent and force. The case is quite different from the one we have just spoken of. When a society has been formed for an indefinite period it is lawful to leave it when by so doing no harm results to the society. A citizen may therefore leave the State of which he is a member, provided it be not at a critical moment when his withdrawal might be greatly prejudicial to the State. But a distinction must here be made between what one has an actual right to do and what one may do honorably and with strict regard to duty; in a word, between *internal* and *external* obligation. Every man has the right to leave his country and take up his abode elsewhere when by so doing he does not endanger the welfare of his country. But a good citizen will never take such a step without necessity or without urgent reasons. It is dishonorable to take advantage of one's liberty and abandon one's associates upon slight grounds, after having received considerable benefits from them; and this is the case of every citizen with regard to his country.

(3) As for those who in time of danger are cowardly enough to seek a place of safety and abandon their country instead of defending it, they clearly violate the social compact by which they have agreed to defend themselves as a united body, and they are base deserters whom the State has the right to punish severely.

§ 221. How one may leave the state for a time.

In a time of peace and tranquillity, when the State has no actual need of all its citizens, the welfare of both State and citizens requires that persons should be allowed to travel in the interests of their business, provided they be at all times ready to return when called back at the need of the State. It is not to be supposed that a man has bound himself to the society of which he is a member in such a way as to be unable to leave the country when his business affairs require it and when he can absent himself without harm to his country.

§ 222. Public laws vary on this point. They must be obeyed.

The public laws of Nations vary widely on this point. Some States permit, except when war is in progress, any citizen to stay away from or even to give up the country definitely whenever he thinks proper, without giving any reason for it. This privilege, of its nature contrary to the welfare and safety of the State, can only be suffered to exist in a country which is without resources and is unable to supply the needs of its inhabitants. In such a country there can only be an imperfect society; for a civil society must be able to provide its members with the means

---

(*a*) This is the foundation of the tax upon emigration, *census emigrationis.*

of procuring by their labor and industry whatever they stand in need of; otherwise it has not the right to require an absolute loyalty from them. In other States all persons may travel freely on business, but may not give up their country definitely without the express permission of the sovereign. Finally, there are States in which the laws are so severe as to forbid any one at all from leaving the country without formal passports, which are only obtained with difficulty. In all these cases the laws must be obeyed when enacted by the lawful authority. But in the last case the sovereign is abusing his power and reducing his subjects to an unendurable slavery if he refuses them permission to travel on business when he might grant it to them without harm or danger to the State. We shall even see that under certain circumstances the sovereign can not detain on any pretext those who wish to leave the country forever.

§ 223. Cases in which a citizen has a right to expatriate himself.

There are certain cases in which a citizen has the absolute right, based upon reasons drawn from the very compact of civil society, to renounce allegiance to his country and abandon it.

(1) If a citizen can not find support in his country he is certainly at liberty to seek it elsewhere; for since men only enter into civil society in order to obtain the more easily a means of livelihood and render their state of life happier and more secure, it would be absurd to pretend that a member to whom the society can not furnish the necessities of life has not the right to leave it.

(2) If the body of the society, or the sovereign who represents it, fail absolutely in their obligations towards a citizen, the latter may break off from them; for the contract between the society and its members is reciprocal, and if one of the contracting parties does not fulfill his part of the agreement, the other is released from his. It is upon this principle that the society may expel a member who violates the laws.

(3) If the majority of a Nation, or the sovereign who represents it, seek to establish laws in matters to which the compact of society can not oblige all citizens to submit, those to whom the laws are repugnant have the right to withdraw from the society and settle elsewhere. For example, if the sovereign or the majority of the Nation will permit the exercise of but one form of religion in the State, those who believe and profess another form have the right to withdraw and take with them their families and their goods; for they are never obliged to submit to the authority of men in a point of conscience,(*a*) and if the society is injured or weakened by their departure it is the fault of the intolerant party; it is they who are violating the social compact and are forcing the others to leave. We have elsewhere given further applications of this third case: the instance of a democratic State which desires to have a king (§ 33), and that of an independent Nation which decides to subject itself to a foreign power (§ 195).

§ 224. Emigrants.

Those who leave their country for a lawful reason, with the intention of taking up their abode elsewhere, are called *emigrants.* They take their families with them, and all their movable property.

§ 225. Sources of their right.

Their right to emigrate may come from various sources:

(1) In the cases we have just referred to (§ 223), it is a right derived from nature, and one reserved to them under the compact of civil society.

(2) The right to emigrate may in certain cases be secured to the citizens by the fundamental law of the State. The citizens of Neufchatel and of Valengin in Switzerland may leave the country and carry off their goods at pleasure, without even having to pay any duties.

(*a*) See the chapter on Religion, above.

(3) It may be voluntarily granted by the sovereign.

(4) Finally, the right may be based upon some treaty made with a foreign power, by which a sovereign has agreed to leave full liberty to his subjects, who, for certain reasons, on account of their religion, for example, desire to settle in the country of the other power. Treaties of this character exist between the German princes, particularly for cases where there is question of religious differences. Likewise, in Switzerland, a citizen of Berne who wishes to remove to Fribourg, and reciprocally a citizen of Fribourg who wishes to remove to Berne, in order to profess the established religion of either State, has the right to leave his country and carry with him all that he owns.

It appears from various historical sources, especially from the history of Switzerland and the neighboring States, that the Law of Nations which custom had established there several centuries ago did not permit one State to receive into the number of its citizens the subjects of another State. This iniquitous custom had no other foundation than the state of slavery to which the people were then reduced. Princes and lords classed their subjects with their private property, and numbered them as so many sheep. To the disgrace of humanity that strange abuse has not yet been everywhere extirpated.

§ 226. If the sovereign violates their right, he does them a wrong.

If the sovereign undertakes to interfere with those who have the right to emigrate he does them a wrong, and such persons may lawfully ask for the protection of the State which is willing to receive them. Thus we find Frederic William, King of Prussia, giving protection to the Protestant emigrants from Salzburg.

§ 227. Suppliants.

Suppliants are all fugitives who seek the protection of a sovereign against the Nation or prince they have fled from. We can not lay down conclusively the principles of the Law of Nations covering their case until we have treated of the duties of one Nation towards other Nations.

§ 228. Exile and banishment.

Finally, a man abandons his country when *exiled* from it. An *exile* is a person driven from the place of his abode, or forced to leave it, but without the stain of infamy. *Banishment* means expulsion of a similar nature, with the stain of infamy.(*a*) Both may be for a limited period, or forever. If an exile or a person who has been banished was domiciled in his own country, he is exiled or banished from his country. In addition it is well to note that in ordinary usage the terms *exile* and *banishment* are applied to the expulsion from a country of aliens who have had no domicile there, they being forbidden to return, either for a limited time or forever.

Since a right of any kind may be taken from a man by way of punishment, *exile*, which deprives him of the right to live in a certain place, may be imposed as a punishment. *Banishment* is always penal in character, since a person may not be publicly disgraced except for real or pretended offenses.

When a society expels one of its members by a perpetual banishment, it only banishes him from its own territory and can not prevent his living wherever else he pleases, for once having expelled him, it has no longer any authority over him. Nevertheless the principle does not hold good where there exists a special agreement between two or more States. Thus each member of the Swiss Confederation can banish its own subjects from the entire Swiss territory, and a person so

---

(*a*) The ordinary use of these terms agrees with the sense we have given them. The French Academy says: "*Banishment* is only applied to condemnations with due process of law, and *exile* is a mere withdrawal caused by some disgrace at court," the point being that a condemnation, where the forms of law are observed, connotes infamy, whereas a court disgrace does not usually do so.

banished will not be admitted into any of the cantons or into the territories of their allies.

Exile may be *voluntary* or *involuntary*. It is voluntary when a man leaves his domicile to escape some punishment or to avoid some disaster; it is involuntary when the result of a command from the State.

Sometimes an exile has the place where he must remain during exile marked out for him, or he may only be forbidden to enter a certain definite area. These various conditions and modifications depend upon those who have the authority to exile.

§ 229. Persons exiled or banished have a right to dwell somewhere.

Banishment and exile do not take away from a man his human personality, nor consequently his right to live somewhere or other. He holds this right from nature, or rather from the Author of nature, who has intended the earth to be man's dwelling-place. The introduction of private ownership of land can not be in derogation of this right to the means of obtaining the necessities of life, a right which belongs to every man by birth.

§ 230. The nature of this right.

But if in the abstract this right is a necessary and perfect one, it must be observed that it is only an imperfect one relative to each individual country; for, on the other hand, every Nation has the right to refuse to admit an alien into its territory when to do so would expose it to evident danger or cause it serious trouble. This right is based upon a care for its own security which it owes as a duty to itself. By reason of its natural liberty it is for each Nation to decide whether it is or is not in a position to receive an alien (Introd., § 16). Hence an exile has no absolute right to choose a country at will and settle himself there as he pleases; he must ask permission of the sovereign of the country, and if it be refused, he is bound to submit.

§ 231. Duty of nations towards them.

Nevertheless, since the introduction of private ownership of land can not defeat the right belonging to every human being of not being absolutely deprived of the necessities of life, no Nation may, without good reason, refuse even a perpetual residence to a man who has been driven from his country. But if for definite and just reasons a State is prevented from offering him an asylum, the man has no further right to demand it, for in such a case the territory occupied by the Nation can not at the same time serve both for its own use and that of the alien. For even supposing that a community of goods was still in existence, no one could take to himself the use of a thing which was actually serving to supply the needs of another. Thus a Nation, whose territory could scarcely supply the needs of its citizens, is not bound to receive a body of fugitives or exiles. It ought even to refuse them absolutely if they are infected with some contagious disease. So also it has the right to send them off elsewhere if it has good reason to fear that they will corrupt the morals of its citizens, or cause religious disturbances or any other form of disorder hurtful to the public welfare. In a word, it has the right, and is even obliged, to follow in this matter the rules of prudence. But this prudence should not take the form of suspicion nor be pushed to the point of refusing an asylum to the outcast on slight grounds and from unreasonable or foolish fears. It should be regulated by never losing sight of the charity and sympathy which are due to the unfortunate. We should entertain these sentiments even for those whose misfortune is their own fault; for by the law of charity which bids men love one another we should condemn the crime but love the victim of it.

§ 232. A nation may not punish faults committed outside of its territory.

If a person has been exiled or banished from his country because of some crime, the Nation in which he takes refuge has no right to punish him for the offense committed in a foreign country; for nature only confers upon men and Nations the right to punish to be used for their defense and security (§ 169); whence it follows that we can punish only those who have done us an injury.

But this principle also makes it clear that while the jurisdiction of each State is in general limited to punishing crimes committed in its territory, an exception must be made against those criminals who, by the character and frequency of their crimes, are a menace to public security everywhere and proclaim themselves enemies of the whole human race. Men who by profession are poisoners, assassins, or incendiaries may be exterminated wherever they are caught; for they direct their disastrous attacks against all Nations, by destroying the foundations of their common safety. Thus pirates are hanged by the first persons into whose hands they fall. If the sovereign of the country in which crimes of this nature have been committed requests the surrender of the perpetrators for the purpose of punishing them, they should be turned over to him as being the one who has first interest in inflicting exemplary punishment upon them; and as it is proper that the guilty should be convicted after a trial conducted with due process of law, we have another reason why criminals of this class are ordinarily delivered up to the States in which the crimes have been committed.

§ 233. Except those which affect the safety of all mankind.

CHAPTER XX.

Public, Common, and Private Property.

§ 234. The *res communes* of the Romans.

Let us now consider the character of the various things embraced in the territory occupied by a Nation and seek to lay down the general principles of the law governing them. The subject is treated by writers on the civil law under the title *de rerum divisione.* There are things which of their very nature can not be appropriated; there are others of which no one claims the ownership and which, after a Nation has taken possession of a country, remain common to all as they originally were. The Roman lawyers term them *res communes*, things common; such were, with them, the air, running water, the sea, fish, and wild beasts.

§ 235. National possessions as a whole, and their classification.

Whatever is susceptible of ownership is regarded as belonging to the Nation occupying a territory and forms the sum total of its possessions. But the Nation does not possess all those things in the same manner. Certain ones which can not be divided among particular communities or among the individuals of the Nation are called *public property.* Of these, some are reserved for the needs of the State and constitute the domain of the crown or of the Republic; others remain common to all the citizens, who make use of them at need or in accordance with laws regulating their use, and these last come under the head of *common property.* There are others which belong to some group of persons, or *community*, and are classed as *joint property* (*res universitatis*); they belong to the particular group in the same way that *public property* belongs to the Nation. The Nation may be looked upon as a vast community, and we may give indifferently the same name of *common property* to the things which belong to it in common, in such a way that all the citizens may make use of them, and to the things which are in like manner possessed by a group of persons, or a community, the same rules holding good for both. Finally, property belonging to individuals is called *private property* (*res singulorum*).

§ 236. Two ways of acquiring public property.

When a Nation as a body takes possession of a country all that is not divided among its members remains common to the whole Nation and becomes public property. There is a second way in which a Nation, and generally speaking, any community, may acquire property, namely, by the free gift of any one who is pleased to transfer to it, under whatever title, the ownership of what he possesses.

§ 237. The revenues from public property are naturally at the disposal of the sovereign.

When a Nation places the reins of government in the hands of a sovereign it naturally means to commit to him at the same time the means of governing. Now, since the revenues from the public property, from the State lands, are intended for the expenses of the Government, they are naturally at the disposal of the sovereign and should always be considered so, unless the Nation in committing to him the supreme authority made a definite exception of the revenues and provided some other means of administering them for the necessary expenses of the State and for the maintenance of the person of the sovereign and of his household. Whenever, therefore, the sovereign authority is committed purely and simply to the Prince, it carries with it the power of freely disposing of the public revenues. It is true that his duty obliges him to employ them for the needs of the State; but it is for him to determine the proper application of them, and he is accountable to no one for them.

§ 238. The nation may grant to him the use and ownership of common property. The Nation may grant to the sovereign alone the use of its *common property* and thus add it to the property of the State as such. It may even cede to him the ownership. But this transfer of the use or ownership requires an express act on the part of the Nation as owner. It can with difficulty be founded upon an implied consent, since fear too often prevents subjects from protesting against the unjust encroachments of the sovereign.

§ 239. Or may confer upon him the ownership and reserve to itself the use of it. The people may even confer upon the sovereign the ownership of the things they possess in common, reserving to themselves the use of them, in whole or in part. Thus the ownership of a river, for example, may be ceded to the sovereign, while the people keep to themselves the use of it for purposes of navigation, fishing, watering cattle, etc. The sovereign may also be given the sole right of fishing in the river, etc. In a word, the people may grant him whatever rights they please over the common property of the Nation; but all such rights are not naturally and of themselves an incident of sovereignty.

§ 240. Taxes. If the revenues from the public property are not sufficient for the public needs, the State makes up the deficit by means of taxes. These taxes should be so adjusted that all the citizens shall pay their share in proportion to their ability to pay and to the advantages they derive from the State. All the members of civil society are equally bound to contribute, according to their ability, to its welfare and advantage; hence they may not refuse to furnish the subsidies necessary to its preservation, according as they are levied by lawful authority.

§ 241. The nation may reserve to itself the right of imposing them. Several Nations have been unwilling to commit so delicate a task to their sovereign, or to grant him a power so easy of abuse. In setting apart certain lands for the support of the sovereign and for the ordinary expenses of the State, they have reserved to themselves the right to provide, either directly or through their representatives, for extraordinary needs, by imposing taxes to be paid by all the inhabitants. In England the King makes known to Parliament the needs of the State, and that representative body of the Nation deliberates upon and with concurrence of the King passes a law defining the amount of the tax and the manner in which it is to be levied. It even obliges the sovereign to give an account of the use made of the money thus raised.

§ 242. The sovereign who has this power. In other States where the sovereign possesses full and absolute authority it is he alone who imposes taxes and determines the manner of levying them, and he uses the money derived from them as he thinks fit, without giving an account to anyone. The King of France at present enjoys this authority, with the simple formality of having his decrees recorded by Parliament; and that body has the right to make humble remonstrances if it finds that the taxes imposed by the sovereign are a hardship—a wise means of calling the attention of the sovereign to the true situation and to the complaints of the people, and of putting bounds to his extravagance or to the greed of ministers and revenue officials.

§ 243. Duty of the sovereign with respect to taxes. A sovereign who possesses the power of imposing taxes upon his people should be careful not to regard the revenues therefrom as his own private property. He should never lose sight of the end for which that power has been intrusted to him. The Nation desired to enable him to provide in his wisdom for the needs of the State. If he diverts those revenues to other uses, if he spends them to indulge himself in luxury and pleasures, or to satiate the greed of his mistresses and favorites, we make bold to assert to those sovereigns who can still grasp the truth that such a one is not less guilty, nay is a thousand times more so, than an individual who uses another's property to satisfy his immoral passions. The fact that injustice may go unpunished does not make it the less shameful.

§ 244. The right of *eminent domain* belonging to sovereignty.

Since the public welfare is the end towards which everything should tend in a civil society, the property of the citizens can not be excepted from the rule if their persons are not. The State could not maintain itself, nor administer its public affairs in the most advantageous manner, if it had not the power to put to use at need the various forms of property subject to its sovereignty. It is even to be presumed that when a Nation takes possession of a country it only allows private property rights over certain things subject to this reserve. The right which belongs to the State, or to the sovereign, to make use of all property within the State for the public welfare in a time of need, is called the *eminent domain.* It is clear that in certain cases this right must be possessed by a ruler, and consequently that it forms an element of the sovereign power and should be numbered among the *royal prerogatives* (§ 45). When, therefore, the people confer sovereignty upon any one, they give him at the same time the *eminent domain* unless express reserve be made of that right. Every prince who is truly sovereign is invested with that right when the Nation has not made an exception with regard to it, however limited in other respects his authority may be.

If the sovereign dispose of *public property* by virtue of his *eminent domain,* the alienation is valid, having been made under sufficient authority.

Likewise when he disposes, in a time of need, of the property of a community or of an individual, the alienation will be valid for the same reason. But justice requires that compensation be made to the community or the individual from the public treasury; and if the treasury can not meet the charge upon it, all the citizens are bound to contribute to it; for the burdens of the State should be borne equally by all, or in just proportion. The case is the same as that of the jettison of merchandise to save a vessel at sea.

§ 245. Sovereignty over public property.

In addition to *eminent domain,* sovereignty carries with it a right of another character over all property, public, common, and private; it is the right of sovereign control over all parts of the territory belonging to the Nation. The supreme power extends to whatever goes on within the State, wherever it takes place, and consequently the sovereign has control over all public places, over rivers, highways, deserts, etc. Whatever takes place there is subject to his authority.

§ 246. The sovereign may make laws regulating the use of common property.

By virtue of the same authority the sovereign may make laws regulating the manner in which common property is to be used, as well that which belongs to the whole nation, as that of distinct bodies or communities. It is true that he can not deprive the joint owners of this property of their rights, but the care he should have for the public peace and for the common welfare of the citizens undoubtedly gives him the right to make laws with that object in view, and consequently to regulate the manner in which common property is to be enjoyed. Such property might be misused and give rise to disturbances, which it is proper for the State to prevent and against which the sovereign must take just measures. Thus the sovereign may prescribe prudent regulations with respect to hunting and fishing; he may forbid both during seasons of propagation, may prohibit the use of certain nets, of all destructive methods, etc. But as it is only in his character as the common father, ruler, and guardian of his people that the sovereign has a right to make such laws, he should never lose sight of the end to be accomplished by them; if he makes them with any other end in view than that of the public welfare he abuses his power.

§ 247. The alienation of community property.

A community, like every other owner, has the right to alienate and to mortgage its property, but its present members should never lose sight of the purposes of this common property nor dispose of it except for the advantage of the body, or in cases of necessity. If they divert it to other objects they misuse their power and fail in their duty to the community and to their successors, and the sovereign in his character of common father has the right to oppose them. Moreover, the welfare of the State requires that the property of communities be not wasted, and this fact gives the sovereign, whose duty it is to care for the public welfare, a further right to forbid the alienation of that property. Hence it is a wise regulation on the part of the State to make the alienation of the property of a community invalid without the consent of the sovereign. Thus the civil law gives to communities the rights of minors in this respect. But that is a purely political enactment, and the opinion of those who, on grounds of natural law, take from a community the power of alienating its property without the consent of the sovereign, seems to me to lack foundation and to be contrary to the idea of ownership. It is true that a community may have received property either from its predecessors or from someone else, upon condition that the property is not to be alienated, but in that case the community has only the perpetual use of it, not the free and entire ownership. If any of its property has been given it for the support of the body, it is clear that the community has not the right to alienate it, except under urgent necessity; and all property which it has received from the sovereign is presumed to be of that character.

§ 248. The use of common property.

All the members of a community have an equal right to the use of its common property. But the members of the community, as a body, may make such regulations as they think fit concerning the manner of using it, provided such regulations do not violate the principle of equality in the enjoyment of it. Thus a community may prescribe the manner of using a common forest or pasture, either leaving them open to all at need or marking out an equal share to each; but it may not rightfully exclude anyone, or discriminate against him by assigning to him a smaller part than that of the others.

§ 249. Manner in which individuals should use it.

Since all the members of a community have an equal right to its common property, each one should make use of it in such a manner as to render it not less useful to all. Following this rule, it is not permissible for an individual to erect beside a river which is public property any structure which might detract from its common usefulness, such as a mill, a ditch to turn off water upon one's lands, etc. To undertake to do so would be to assume a private right, derogatory to the common rights of all.

§ 250. The right of the first comer.

The right of *the first comer* (*jus præventionis*) should be faithfully observed in the use of common property, which can not be used by several persons at the same time. For example, if I am actually drawing water from a common or public well, another who comes after me may not push me aside in order to draw water himself, but must wait till I have finished; for in thus drawing water I am acting on my right and may not be troubled in it by anyone; a second comer, who has an equal right, may not exercise it to the impairment of mine, and in stopping me by his arrival he would be claiming a greater right than mine and violating the law of equality.

§ 251. Another application of the same right.

The same rule should be observed with respect to the use of such common property as is consumed in the using. It belongs to the first person who takes actual steps to put it to use; a second comer has no right to deprive him of it. I go to a public forest and begin to cut down a tree; you come upon the scene and want the same tree; you may not take it away from me, for that would be to assert a right superior to mine, and our rights are equal. This rule is similar to that prescribed by the Law of Nature for the use of the fruits of the earth before the introduction of private ownership.

§ 252. The maintenance and repair of public property.

The expenditures required to maintain and repair public property should be borne equally by all those who have a share in it, whether the necessary funds be drawn from the public treasury or be obtained by each individual contributing his proportion. A Nation, community, and in general any body of persons may, therefore, impose extraordinary taxes or annual contributions to meet such expenditures, provided they be not burdensome and be faithfully applied to the object for which they were raised. It is, moreover, with this end in view, as we have already remarked (§ 103), that payment of toll may be lawfully exacted. Highways and bridges are public property which are a benefit to all who use them, and it is just that such persons should contribute to their maintenance.

§ 253. Duty and rights of the sovereign in this respect.

We have just seen that the sovereign must provide for the maintenance of public property. He is none the less obliged, as ruler of the whole Nation, to watch over the preservation of the property of a community. It is of interest to the whole State that a community sink not into an impoverished condition through the misconduct of its members for the time being; and since an obligation carries with it the right to do what is necessary to fulfill it, the sovereign has the right to hold the community to its duties in that matter. Hence if he finds, for example, that it is permitting its necessary buildings to fall to ruin, or is destroying its forests, he has the right to prescribe its duty and see that it fulfills it.

§ 254. Private property.

We have but a word to say concerning private property. Every owner has the right to control his property and dispose of it as he thinks proper, so long as the rights of third persons are not involved. However, the sovereign, as common father of his people, may and should restrain a spendthrift and prevent him from running to his ruin, especially if he be the father of a family. But he must take great care not to push this right of guardianship to the extent of impeding his subjects in the administration of their affairs, which would be no less hurtful to the true welfare of the State than to the due liberty of the citizens. The details of this subject belong to the province of public law and government.

§ 255. The sovereign may regulate its use.

It must be further noted that individuals have not such liberty in the management and control of their property as not to be subject to the police laws and regulations enacted by the sovereign. For example, if a country has too many vineyards and is in need of grain, the sovereign may forbid the planting of vines in fields which can grow grain, for here the public welfare and the safety of the State are concerned. When a reason of that importance calls for it, the sovereign or local magistrate may fix the price and force an individual to sell his commodities over and above what he needs for his own sustenance. The public authority may and should prevent monopolies, and suppress all practices tending to raise the price of the necessities of life, practices to which the Romans applied the terms *annonam incendere, comprimere, vexare.*

§ 256. Inheritances.

Every man may naturally select the person to whom he wishes to leave his property after his death, except in so far as his right is limited by some indispensable obligation, as, for example, that of providing for the support of his children. Accordingly children have a natural right to succeed in an equal degree to the property of their father. But that does not prevent special laws as to wills and inheritances from being established in a State, provided the essential rights derived from nature are respected. Thus, with a view to the maintenance of noble families, it is enacted in several States that the eldest son is by right the principal heir of his father. Lands entailed upon the eldest son of a family come to him by virtue of another right, which is founded upon the fact that the owner of those lands chose to bequeath them in that manner.

CHAPTER XXI.

The Alienation of Public Property or of the Public Domain, and of a Part of the State.

§ 257. A nation may alienate its public property.

Since a Nation is the sole owner of the property in its possession, it may dispose of that property as it thinks best, it may alienate it or mortgage it validly. This right necessarily follows from full and absolute ownership, and the exercise of it is restricted, by virtue of the natural law, only with respect to owners who have not the use of reason requisite for the management of their affairs, which is not the case with a Nation. Those who hold the contrary opinion have no sound arguments for it, and the logical result of their principles would be that a binding contract could never be made with any Nation, a conclusion which undermines the foundations of all public treaties.

§ 258. Duties of a nation in this respect.

But it may be said very justly that a Nation should preserve carefully its public property, should make proper use of it, and not dispose of it without good reason, nor alienate or mortgage it except where the benefit is clear or the case one of urgent necessity. Such a policy is the evident conclusion from a Nation's duties towards itself. Public property is very useful and even necessary to it; it may not squander it without injuring itself and shamefully neglecting its own welfare. I am here speaking of public property strictly so called, or of the possessions of the State as such. It is cutting the very sinews of a government to deprive it of its revenues. As for the property common to all the citizens, a Nation would do a wrong to those who make use of that property if it were to alienate it without necessity or good reason. It has the right to do so, as owner of the property, but it should not dispose of it, except in so far as is consistent with the duties of the body towards its members.

§ 259. Duties of the sovereign.

A like duty devolves upon the sovereign or ruler of a Nation. He should watch over the preservation and wise management of public property, should stop and prevent any waste of it, and not allow it to be put to other uses than those for which it was intended.

§ 260. He may not alienate public property.

The Prince or the ruler of a society is properly only the administrator, not the owner of the State; his position as head of the Nation, as sovereign, does not of itself give him the right to alienate or to mortgage the public property. The general rule, therefore, is that the sovereign can not dispose of the public property as to its substance; the right to do so is reserved to the owner alone, since ownership is defined as the right to dispose of a thing as to its substance. If the sovereign acts in excess of his power with respect to this property, any alienation he may make is invalid, and can always be revoked by his successor, or by the Nation. This is the generally received law in France; and it was upon this principle that the Duc de Sully(*a*) advised Henry IV to resume possession of those demesne lands of the Crown which had been alienated by his predecessors.

§ 261. The nation may give him the right to do so.

As the Nation has the free disposal of all property belonging to it (§ 257), it may transfer its right to the sovereign and thus confer upon him the right to alienate and mortgage the public property. But as this right is not essential to the ruler of

---

(*a*) See his Memoirs.

the State in order to govern successfully, it is never to be presumed that the Nation has conferred it upon him, and unless there is an express law to that effect he must be held not to have it.

§ 262. Rules on this subject in the case of treaties between nation and nation.

The rules we have just laid down have reference to the alienation of public property in favor of individuals. A new proposition is presented when there is question of alienations made by one Nation to another.(*a*) Other principles are needed to decide it in the different cases which may arise. Let us try to present the general theory of them.

(1) It is essential that Nations be able to treat and negotiate validly with one another, otherwise they would have no means of settling their affairs and putting themselves in a state of peace and security, whence it follows that when a Nation has ceded some part of its property to another, the cession must be regarded as valid and irrevocable, as it is in fact, by virtue of the idea of *ownership*. This principle can not be weakened by any fundamental law, by which a Nation might claim to have taken away from itself the power of alienating what belongs to it, for this would manifest an intention to deprive itself of the power of contracting with other Nations or to mean to deceive them. A Nation having such a law should never enter into a treaty involving its property; if necessity oblige it, or its own advantage lead it to do so, the moment it enters into a treaty it abandons its fundamental law. Scarcely anyone would deny to a whole Nation the power to alienate what belongs to it; and if it be asked whether the ruler or sovereign has this power, the question can be decided by the fundamental laws. But suppose that the laws make no direct reference to the point, we come then to our second principle.

(2) If the Nation has conferred full sovereignty upon its ruler, if it has committed to him the duty and given him without any reservation the right of treating and contracting with other States, it is held to have invested him with all the powers needed to make a valid contract. The sovereign is in this case the representative of the Nation; his act is held to be its act, and though he be not the owner of the public property, he may validly alienate it as acting under due authority.

§ 263. The alienation of a part of the state.

The point becomes more difficult when there is question, not of the alienation of certain public property, but of the dismemberment of the Nation or State itself, by the cession of a town or of a province forming part of it. However, a sound decision may be obtained by applying the same principles. A Nation has the duty of self-preservation (§ 16); it must protect all its members, it may not abandon them, and it is under obligation to maintain them in their status as members of the Nation (§ 17). Hence it has no right to barter away their allegiance and their liberty for certain advantages which it hopes for in return. They joined the society to be members of it; they recognize the authority of the State in order that they and the other citizens may work together for their common welfare and safety, and not with the intention of being at its disposal like a tract of land or a herd of cattle. But the Nation may lawfully abandon them in a case of extreme necessity, and it has the right to cut them off from its body if the safety of the State require it. When, therefore, in a case of this kind, the State abandons a town or a province to a neighbor or to a powerful enemy, the cession is validly made, since the State makes it of right. It has then no further claims upon the town or province, having ceded all of its rights.

(*a*) Quod domania regnorum inalienabilia et semper revocabilia dicuntur, id respectu privatorum intelligitur; nam contra alias gentes divino privilegio opus foret. (Leibnitz, Præfat. ad Cod. Jur. Gent. Diplomat.)

§ 264. Rights of those who are thus cut off from the state.

But the province or town thus abandoned by and cut off from the State is not bound to accept the new master thus imposed upon it. Once separated from the society of which it was a member, it reenters upon its original rights, and if it is strong enough to defend its liberty it may lawfully resist the sovereign who claims authority over it. When Francis I agreed, by the Treaty of Madrid, to cede the Duchy of Burgundy to the Emperor Charles V, the estates of that province declared "that having always been subject only to the crown of France, they would die in allegiance to it, and that if the King abandoned them they would take up arms and endeavor to win their liberty rather than come under subjection to another."(*a*) It is true that resistance can rarely be made on such occasions, and ordinarily the wisest course is to submit to the new master upon the best terms that can be obtained.

§265. Whether the prince has the power to dismember the state.

Has the Prince, or the ruler of whatever type, the power to dismember the State? We answer as we did above when speaking of the property of the State as such: If the fundamental law forbids any such dismemberment by the sovereign he has no power without the concurrence of the Nation or of its representatives. But if the law is silent on that point, and if the Prince has been given full and absolute sovereignty, he is then the depositary of the rights of the Nation and the organ of its will. The Nation should not abandon its members except under necessity, or in view of the public welfare, or to preserve itself from total ruin; and the Prince's conduct should be governed by the same reasons. But having been given full sovereignty, it is for him to decide upon the necessities of the case and upon what the welfare of the State requires.

On the occasion of the Treaty of Madrid, of which we have just spoken, the leading men of France assembled at Cognac after the return of the King and decided unanimously "that his authority did not warrant him in dismembering the crown."(*a*) The treaty was declared null and void, as being contrary to the fundamental law of the Kingdom; and indeed it had been concluded without sufficient authority, since the law expressly denied to the King the power to dismember the State. The concurrence of the Nation was necessary, and it could have given its consent through its representatives in the States-General. Charles V should not have released his prisoner until that assembly had approved of the treaty; or rather, acting the part of a more generous victor, he should have imposed less severe conditions, which it would have been within the power of Francis I to comply with and which that Prince could not have refused to perform without dishonor. But now that the States-General of France no longer assemble, the King remains the sole organ of the State in its relations with foreign powers, and they rightly consider his act as that of the whole Nation; so that any cession made to them by the King would be valid by reason of the consent of the Nation that he should treat with them, to be implied from the full power conferred upon him. Under any other view no safe contracts could be made with the Crown of France. For greater security foreign powers have often required that their treaties be registered in the Parliament of Paris; but even that formality seems to be no longer in use to-day.

(*a*) Mezeray, *Histoire de France*, Tom. II, p. 458.

CHAPTER XXII.

Rivers, Streams, and Lakes.

§ 266. A river which separates two countries.

When a Nation takes possession of a country with the intent to settle there, its jurisdiction extends over all that is included within the territory—lands, lakes, rivers, etc. But it may happen that the territory is bounded, and thus separated from another State, by a river. The question arises, to whom does this river belong? It is clear, from the principles laid down in Chapter XVIII, that it ought to belong to the Nation which first took possession of it. The principle is undeniable, but difficulties arise in applying it. It is not easy to decide which of two adjacent Nations was the first to take possession of a river separating them. These are the rules furnished by the Law of Nations for the settlement of this class of questions:

(1) When a Nation takes possession of a country bordered by a river, it is regarded as appropriating the river also; for a river is of such great service that it can not be presumed that the Nation had not the intention of claiming it. Consequently the Nation which first sets up jurisdiction over one of the banks of a river is to be regarded as the first occupant of as much of the river as borders its territory. When there is question of a very large river the presumption is incontestable, at least with respect to a part of its breadth; and the force of the presumption increases or diminishes, with respect to the whole, in inverse ratio to the breadth of the river; for the narrower the river the more do reasons of safety and convenience in its use require that it be owned by and wholly subject to the sovereignty of the Nation.

(2) If the nation has made any use of the river, as for navigation or for fishing, the presumption is all the greater that it had the intention of appropriating it.

(3) If neither of two co-riparian Nations can prove that it, or the Nation from whom it derives its title, was the first to settle in that region, it is presumed that both came thither at the same time, since neither has any claim to preference. In this case the jurisdiction of each extends to the middle of the river.

(4) Long and undisputed possession gives a right to Nations, otherwise there could be no peace or stability among them, and well-known facts should be accepted as proof of possession. Thus, when from time immemorial a Nation has exercised an undisputed sovereignty over a river forming its boundary, the rights of the Nation can not be contested.

(5) Finally, where there are any treaty provisions on the subject they must be observed. The safest way to decide the question is by means of definite stipulations, and this is, in fact, the method followed to-day by most of the Powers.

§ 267. The bed of a river which either dries up or changes its course.

If a river leaves its bed, whether it dry up or change its course, the bed belongs to the owner of the river; for the bed forms part of the river, and the appropriation of the whole necessarily includes its parts.

§ 268. The right of alluvion.

If a territory which terminates at a river has no other boundaries than the river itself, it is one of those territories which have natural or indeterminate boundaries (*territoria arcifinia*), and it possesses the right of *alluvion*, that is to say, the insensible accretions received by the land from gradual fluvial deposits are so much increase of territory and are absorbed into it and belong to the same owner; for if I take possession of a country and declare that I choose as boundaries the river bordering it, or if it is given to me with that title, I thus obtain in advance the right of *alluvion*, and consequently I may claim as my own whatever accretions the current of the river may add insensibly to my land. I say "insensibly," because in the very rare case called *avulsion*, when the swiftness of the current detaches a considerable part of one piece of land and adds it to another in such a way that it can still be recognized, the part thus detached naturally belongs to the original owner. As between individuals, the civil laws have provided for the decision of the case; they should combine equity with the welfare of the State and a care to prevent litigation.

In a case of doubt every territory terminating at a river is presumed to have no other boundary line than the river itself, for nothing is more natural than to take the river for a boundary when a settlement is made upon its borders; and when a doubt exists, the presumption is always in favor of what is more natural and probable.

§ 269. Whether alluvion produces any change in the rights over a river.

Once it has been determined that a river forms the boundary line between two territories, whether it remains the common property of the co-riparian States or whether each owns half of it, or finally, whether it belongs in its entirety to one of them, their various rights over the river undergo no change from alluvion. Hence if by the natural action of the current one of the two territories receives an accretion, while the river gradually encroaches upon the opposite bank, the river remains the natural boundary of the two territories, and each retains the same rights over it, in spite of the gradual change of its course; so that, for example, if a line running down the middle marked the original boundary, it will continue to be the boundary line, although its position has actually changed. It is true that one is losing while the other gains, but the change is due to nature alone, which takes soil from the one while building up new land for the other. The case can not be otherwise decided when the river alone is taken as a boundary line.

§ 270. The result of a change in the course of the river.

But if, instead of a gradual displacement, the river, by a mere natural accident, turns completely from its course and flows over one of the two riparian States, the bed which it has left continues as the boundary line and belongs to the former owner of the river (§ 267); the river is lost, as far as that part of it is concerned, while it reappears in its new bed as the exclusive property of the State in which it flows.

This case is quite different from that of a river which changes its course without leaving the State through which it flows. Such a river continues to belong, in its new bed, to the same owner, whether the State or one to whom the State has given it, because rivers are public property in whatever part of the country they flow. The bed abandoned by the river belongs in moiety to the adjacent lands if they have national boundaries with the right of alluvion. This bed no longer belongs to the public, in spite of the doctrine laid down in § 267, because of the right of alluvion held by the riparian owners, and because it only belonged to the public on account of the river flowing over it; but it continues to be public property if the adjacent lands have other than natural boundaries. The lands over which the river takes its new course are lost to their owner, because the rivers of a country in every case belong to the public.

§ 271. Works tending to turn aside the current.

It is not permissible to construct upon the shore of the river works which tend to turn aside its course and force it over upon the opposite bank, for this would be an attempt to gain at the expense of another. Each riparian owner can do no more than secure himself by preventing the current from undermining and carrying off his land.

§ 272. Or, in general, hurtful to the rights of others.

In general, no works which are injurious to the rights of others may be constructed upon a river any more than elsewhere. If one Nation owns a river and another has an absolute right to navigate it, the former may not construct a dam or a mill which would render it no longer navigable; its right, in this instance, is one of limited ownership and can not be exercised without respect for the rights of others.

§ 273. Rules with respect to two conflicting rights.

But when two different rights to the same thing happen to conflict it is not always easy to decide which of the two should yield to the other. A fair decision can only be given by considering carefully the nature of the rights and their origin. For example, you have a right to fish in a river which belongs to me. Can I construct mills which will render the fishing more difficult and less profitable? The nature of our rights would seem to decide in the affirmative. I, as owner, have an essential right over the thing itself; you have only a right of use, subordinate to and dependent upon mine. You have only the general right to fish as best you can in my river, such as it is, and in the condition in which it pleases me to keep it. I do not deprive you of your right by building my mills; it still continues in its general form, and if it becomes less useful to you, that is by accident, and because it is dependent upon the exercise of mine.

But this rule does not hold good with respect to the right of navigation, of which we have just spoken. That right necessarily supposes that the river is to remain open and navigable; it excludes the construction of any works which would absolutely interrupt navigation.

The antiquity and the origin of the rights in question are no less useful in deciding the case than their nature. The more ancient right, if absolute, may be exercised to its fullest extent, and the other only in so far as not to be prejudicial to the first; for the later right could only have arisen with that understanding, unless the one who held first right expressly consented to its limitation.

Likewise, rights granted by the owner of a thing are held to have been granted without prejudice to other rights retained by him, and only in so far as they are consistent with those other rights, unless, however, an express stipulation or the very nature of the rights decide differently. If I have granted to another the right to fish in my river it is clear that I mean that right to be without prejudice to others I retain, and that I am free to construct upon the river such works as I shall think proper, even though they should injure the fishing, provided they do not altogether destroy it. A structure of this last character, such as a dam which would prevent the fish from ascending the stream, could only be constructed in a case of necessity and on making due compensation, according to circumstances, to the person who has the right of fishing.

§ 274. Lakes.

What has been said of rivers and streams can easily be applied to lakes. Every lake entirely inclosed in the territory of a Nation belongs to that Nation, which in taking possession of the country is presumed to have appropriated everything included in it; and as it rarely happens that the ownership of a lake of considerable size falls into the hands of individuals, it remains common to the whole Nation. If the lake lies between two States it is held to be divided between them by a line through the middle of the lake, so long as there is no title or fixed and well-known custom to lead to another conclusion.

§ 275. Lakes which increase in extent.

What was said of the right of alluvion with respect to rivers should be extended to lakes as well. When a lake which forms the boundary of a State belongs entirely to that State, any increase in the extent of the lake goes to the owner of the whole; but such increase must be gradual, as in the case of alluvion, and in addition must be real, permanent, and complete. Let me explain: (1) I speak of a gradual increase, and as the question here is of the increase of a lake, the case is the reverse of alluvion, where there was question of increase of soil. If the increase is not gradual, if the lake, overflowing its borders, inundates a wide area, this new arm of the lake, this tract of land covered with water, continues to belong to its original owner. On what ground could the owner of the lake lay claim to it? The area is easily recognizable, although its character is changed, and it is too great in extent to admit of the supposition that the owner did not mean to retain it, in spite of the changes which it might undergo.

But, (2) if the lake wears away perceptibly a portion of its bank, if it destroys it and renders it unrecognizable, by encroaching upon it and adding it to its bed, that portion of the bank is lost to its owner, it no longer exists, and the lake thus increased in extent continues to belong in its entirety to the same State.

(3) If certain lands surrounding the lake are merely flooded at seasons of high water this temporary circumstance can not produce any change in ownership. The reason why, as between States, the soil which the lake encroaches upon little by little belongs to the owner of the lake and is lost to its original owner, is because the latter has no other boundary line than the lake to mark the extent of its territory. If the water advances imperceptibly, the State loses; if it recedes in like manner the State gains. Such must have been the intention of the Nations which appropriated the lake and the surrounding territory, and it can with difficulty be supposed that they had any other. But lands flooded for a time are not to be confused with the rest of the lake; they are still recognizable, and the owner retains his right over them. Unless this were so a town flooded by a lake would pass under another sovereignty during the time of high water and return to its former sovereign as soon as the flood should subside.

(4) On the same principle, if the waters of a lake find an opening into the surrounding country and there form a bay, or a sort of new lake, connected with the first by a canal, the new body of water and the canal belong to the owner of the lands which they cover; for the boundaries are easily recognizable, and it can not be presumed that there was any intention of relinquishing so large an area if it should happen to be invaded by the waters of a neighboring lake.

Let us note once more that we are here treating the questions as between States; other principles are needed to decide cases which arise between owners who are citizens of the same State. In the latter instance it is not only the boundary line of the soil which determines ownership, but also its nature and its use. The individual who possesses a field bordering on a lake can no longer use it as a field when it is overflowed; a person who, for example, has a right to fish in the lake may exercise his right in the new body of water; if the waters recede, the field is restored to the use of its owner. If the lake penetrates by an opening into the low-lying lands of the surrounding country and permanently submerges them, the new lake belongs to the public on the principle that all lakes are public property.

§ 276. Accretions formed on the borders of a lake.

The same principles make it clear that if the lake forms gradual accretions upon its borders, whether by receding or in any other manner, such accretions belong to the country which receives them when the lake forms the only boundary of the country at that point. The case is the same as that of alluvion on the shores of a river.

§ 277. The bed of a lake that has dried up.

But if the lake should suddenly happen to dry up, either wholly or in large part, the bed would remain the property of the sovereign of the lake, since the easily recognizable character of the bottom would indicate sufficiently the boundary-line.

§ 278. Jurisdiction over lakes and rivers.

The sovereignty or jurisdiction over lakes and rivers follows the same rules as ownership in all the cases we have just examined. Each State naturally possesses it over the whole lake or river, or over that portion of which it is the owner. We have seen (§ 245) that the Nation, or its sovereign, has jurisdiction over all the territory which it possesses.

CHAPTER XXIII.

The Sea.

§ 279. The sea and its uses.

In order to complete our exposition of the principles of the Law of Nations with respect to the property of a nation, we have still to treat of the sea. The high seas are useful for purposes of navigation and for fishing; the coasts of the sea are put to use in the search for things that are found near the shore—shells, pearls, amber, etc.—in the making of salt, and finally as places of refuge and safety for vessels.

§ 280. Whether the sea is susceptible of occupation and ownership.

The high seas are not of such a nature as to admit of actual occupation, since no one can so take possession of them as to prevent others from using them. But a Nation powerful at sea might forbid others to fish in it or navigate it by declaring that it has appropriated the ownership of it and will destroy vessels which undertake to navigate it without permission. Let us see if it would have a right to do so.

§ 281. No one has a right to appropriate the use of the high seas.

It is clear that the use of the high seas for purposes of navigation and fishing is innocent in character and inexhaustible; that is to say, one who sails the high seas or who fishes therein injures no one, and the sea in both these respects can satisfy the needs of all men. Now, nature does not give men the right to appropriate things the use of which is innocent and the supply inexhaustible and sufficient for all; for since each one can obtain from the sea, as common property, what will satisfy his wants, the attempt to make oneself sole master of it and to exclude others would be depriving them unreasonably of the blessings of nature. As the earth, in its uncultivated state, did not furnish the human race, when it had multiplied greatly, with all necessary and useful products, it was found convenient to introduce the right of ownership, so that each one might apply himself with greater success to cultivate the share which fell to his lot, and to increase by his industry the various necessities of life. That is why the natural law approves of the rights of private ownership, which put an end to the common property of primitive times. But this reason can not apply to things of which the supply is inexhaustible, and therefore it can not be alleged as a just ground for appropriating them. If the free and common use of a thing of this nature were hurtful or dangerous to a Nation, the care of its own safety would authorize it in subjecting, if it could do so, the object in question to its sovereignty, so as to subject its use to such precautions as prudence might dictate. But this is not the case with the high seas, on which one may sail and fish without harm or danger to anyone. Hence no Nation has the right to take possession of the high seas, or claim the sole right to use them, to the exclusion of others. The Kings of Portugal formerly laid claim to sovereignty over the seas of Guinea and the East Endies,(*a*) but the other maritime powers did not trouble themselves over the pretension.

§ 282. The nation which attempts to exclude another does it an injury.

Since, then, the right of navigating and fishing on the high seas is common to all men, the Nation which undertakes to exclude another from that advantage does it an injury and gives just cause for war; for nature authorizes a Nation to repel an attack; that is, to resist with force any attempt to deprive it of its rights.

§ 283. It even does an injury to all nations.

Let us go further and say that a Nation which seeks to lay claim, without good title, to an exclusive right over the sea, and to maintain it by force, does an injury to all Nations whose common right it violates; and they may all unite against it to check its claims. It is of the greatest importance to nations that the Law of

---

(*a*) See Grotius, *Mare Liberum;* and Selden, *Mare Clausum*, Lib. I, cap. XVII.

Nations, which is the basis of their peace, be everywhere respected. If anyone openly treads it under foot all may and should rise against that nation; and by thus uniting their forces to punish their common enemy, they will fulfill their duties towards themselves and towards human society, of which they are members. (Intro., § 22.)

§ 284. It may acquire an exclusive right by treaties.

Nevertheless, as every one is free to renounce his right, a Nation may acquire exclusive rights of navigation and fishing by treaties in which other Nations renounce in its favor the rights which belong to them by nature. The latter are bound to observe such treaties; and the Nation in whose favor they are made has the right to keep possession of its advantages by force. It was in this way that Austria renounced in favor of England and Holland the right to send vessels from the Netherlands to the East Indies. Several examples of such treaties can be found in Grotius, De Jure Belli et Pacis, Lib. II, Cap. III, § 15.

§ 285. But not by prescription or long usage.

Since the rights of navigation and fishing and other rights which are exercised on the sea are classed among those rights which may be exercised at will (*jura meræ facultatis*), and which are not subject to prescription (§ 95), they can not be lost by non-user. Hence, although it should happen that a nation had been, from time immemorial, the only one to exercise the right of navigating or fishing in certain seas, it could not on that ground claim an exclusive right; for the fact that other Nations did not use their common right of navigating and fishing in the waters in question does not lead to the conclusion that they agreed to renounce their right, and they may still use it as often as they please.

§ 286. Unless in virtue of an implied agreement.

But it can happen that non-user may take on the character of consent, or implied agreement, and thus become a title in favor of one Nation as against another. When a Nation is alone in exercising the right of navigating and fishing in certain waters, and claims an exclusive right, and forbids others to exercise their right, if they obey the prohibition with sufficient signs of acquiescence they impliedly renounce their right in favor of the other Nation and give it an exclusive right which it may lawfully maintain against them in the future, especially when that right is confirmed by long usage.

§ 287. The sea near the coasts may be subject to ownership.

The various uses to which the sea near the coasts can be put render it a natural object of ownership. Fish, shells, pearls, amber, etc., may be obtained from it. Now, with respect to all these things, the resources of coast seas are not inexhaustible, so that the Nation to which the shore belongs may claim for itself an advantage thus within its reach and may make use of it, just as it has taken possession of the lands which its people inhabit. Who can doubt that the pearl fisheries of Bahrein and Ceylon may be lawful objects of ownership? And although the supply of fish is less easily exhausted, yet if a Nation has specially profitable fisheries along its coasts, of which it can take possession, are we not to allow it to appropriate that gift of nature as being connected with the territory it occupies, and to keep to itself the great commercial advantages which it may enjoy, should there be fish enough to supply neighboring Nations? But if, instead of taking possession of its coastal waters, it should once recognize the common right of other nations to fish therein, it may no longer exclude them, having left those fisheries in their primitive condition of common property, at least with respect to those who have been making use of them. The English did not take possession from the start of the herring fisheries on their coasts, so that other Nations have come to have a share in them.

§ 288. Another reason for appropriating the sea near the coasts.

A Nation may appropriate such things as would be hurtful or dangerous to it if open to free and common use; and this is a second reason why the Powers extend their sovereignty over the seas along their coasts, as far as they can protect their right. It is a matter of concern to their security and their welfare that there should not be a general liberty to approach so near their possessions, especially with ships of war, as to hinder the passage of trading vessels and disturb navigation. During the wars between Spain and the United Provinces, James I, King of England, defined his marginal seas as bounds within which he asserted that he would not permit any of the belligerent powers to pursue their enemies nor to station warships in order to lie in wait for vessels seeking to enter or leave the ports.(*a*) These marginal seas, thus subject to a Nation, are part of its territory and may not be navigated without its permission. But access may not lawfully be refused to vessels when their purpose is innocent and they are not under suspicion, since every owner is bound to grant free passage to strangers, even by land, when no harm or danger results from so doing. It is true that the Nation itself is the judge of what it can do in the individual cases that arise, and if its judgment is unfair it violates its obligations, but other Nations must submit. A different rule applies in cases of necessity, when, for example, a vessel is forced to enter the waters of another nation to seek shelter from a storm. In this case the right of entry into any port, provided no harm be done, or compensation be made where it has been done, is, as we shall show at greater length, a remnant of primitive common rights which no man can renounce; so that the vessel may lawfully enter without permission if it be unjustly refused.

§ 289. How far marginal waters may be appropriated.

It is not easy to determine just what extent of its marginal waters a Nation may bring within its jurisdiction. Bodin(*b*) claims that, following the common rule of all maritime Nations, the sovereignty of the Prince extends as far as thirty leagues from the shore. But this precise determination could only be based upon a general consent of Nations, which it would be difficult to prove. Each State may regulate as it thinks best the use of those waters as far as the affairs of its citizens, either with one another or with the sovereign, are concerned; but between Nation and Nation the most reasonable rule that can be laid down is that in general the sovereignty of a State over its marginal waters extends as far as is necessary for its safety and as far as it can be effectively maintained; because on the one hand a Nation may appropriate only so much of common property, like the sea, as it has need for some lawful end (§ 281), and, on the other hand, it would be an idle and ridiculous pretension to claim a right which a Nation would have no means of enforcing. The naval power of England gave occasion to its Kings to claim sovereignty over its marginal seas as far as the opposite shore.(*c*) Selden cites a solemn act,(*d*) from which it appears that, in the time of Edward I, this sovereignty was recognized by the majority of the maritime Nations of Europe, and it was recognized, in a certain degree, by the Republic of the United Provinces in the Treaty of Breda in 1667, at least to the extent of showing the honors of the flag. But in order to put so extensive a right on a sound basis, it must be clearly shown that all the powers concerned have given their express or implied consent. The French have never agreed to this claim on the part of England, and in the very Treaty of Breda of which we have just spoken Louis XIV would not even allow that the channel should be called the *English Channel* or *British Sea*. The Republic of Venice claimed for itself the sovereignty of the Adriatic Sea, and the ceremonies performed every year in connection with its claims are familiar to all. In support of that right are cited the example of Uladislas, King of Naples, of the Emperor Frederick III, and of certain Kings of Hungary, who requested of the Venetians permission to sail

---

(*a*) Selden, *Mare Clausum*, Lib. II.

(*b*) *De la République*, Liv. I, chap. X.

(*c*) See Selden's treatise, *Mare Clausum*.

(*d*) *Ibid.*, Lib. II, cap. XXVIII.

their vessels in that sea.(*a*) It seems to me unquestionable that the Republic possessed sovereignty to a certain distance from its coasts, over an area which it could take possession of and which it was important that the State should have jurisdiction over for its own protection; but I doubt very much whether in these days any power would be disposed to recognize the sovereignty of Venice over the entire Adriatic. Such claims of sovereignty are respected so long as the Nation which makes them is able to maintain them by force; they cease when it can no longer do so. To-day the area of marginal seas which is within reach of a cannon shot from the coast is regarded as part of the national territory, and consequently a vessel captured under the cannon of a neutral fortress is not lawful prize.

§ 290. Shores and ports. The shores of the sea belong unquestionably to the Nation which possesses sovereignty over the territory of which they form a part, and they come under the head of public property. If the Roman jurists class them as the common property of all (*res communes*), it is with respect to their use only, and it should not be inferred that they considered them as not subject to sovereignty, for the contrary is evident from a great number of laws. Ports and harbors are still more clearly subject to, and even a part of, national territory, and consequently are the property of the Nation. As regards the effects of ownership and sovereignty, all that is said of the land itself applies to them.

§ 291. Bays and straits. All that has been said of marginal seas applies more especially and with greater reason to roads, bays, and straits, inasmuch as they are even more capable of being effectively possessed and are of greater importance to the safety of the State. But I am speaking of bays and straits of small area, and not of wide stretches of sea sometimes called by these names, such as Hudson's Bay and the Straits of Magellan, over which sovereignty, and still less ownership, could not be claimed. A bay, entrance into which can be prevented, may be possessed and made subject to the laws of the sovereign; and it is important that this be so, since the Nation might be much more easily insulted in such waters than along the coast which is exposed to the winds and the force of the waves.

§ 292. Straits in particular. It must be specially noted with regard to straits that when they connect two seas the navigation of which is common to all or to several Nations, the owner of the strait can not refuse passage to the other Nations, provided such passage be innocent and without danger to the owner. To refuse to do so without good reason would be to deprive those Nations of an advantage which is granted to them by nature; and besides, the right to such passage remains to them from primitive common ownership. But the care of its own safety authorizes the Nation owning the strait to use certain precautions and to exact certain formalities, commonly regulated by the custom of Nations. It has also the right to levy a moderate toll upon vessels which pass through, partly because of the inconvenience they cause in obliging the Nation to be on its guard and partly as the price of the security given them against their enemies and against pirates, and of the expenditures entailed in the maintenance of lighthouses and buoys, and other things necessary to the safety of navigators. Thus the King of Denmark exacts toll in the Strait of the Sound. Such tolls should be based upon the same reasons and subject to the same rules as tolls on land or on rivers. (See §§ 103, 104.)

§ 293. Right to wrecks. Need we speak of the *right to wrecks*, that deplorable result of barbarous ages, which happily has almost everywhere disappeared with them? The only case in which it might exist with justice and humanity is where the owners of the rescued

---

(*a*) See Selden's treatise, *Mare Clausum*, Lib. I, cap. XVI.

goods can not possibly be ascertained. The goods then belong to the first comer or to the sovereign, if the law reserve them to him.

§ 294. A sea inclosed within the territory of a nation.

If a sea is entirely inclosed within national territory and connects with the ocean only by a channel of which the Nation can take possession, it would seem that such a sea is no less susceptible of occupation and ownership than the land, and it should come under the same jurisdiction as the land surrounding it. The Mediterranean Sea was in former times completely surrounded by Roman territory, and the Romans, by making themselves masters of the strait connecting it with the ocean, could subject that sea to their sovereignty and claim the ownership of it. They did not violate, in so doing, the rights of other Nations, since an individual sea is clearly destined by nature to the use of the countries and Nations which surround it. Moreover, by barring the entrance to the Mediterranean against all suspected vessels the Romans secured at one stroke the whole extent of their coastline, which was sufficient reason to authorize them to take possession of the strait; and as it was a means of communication with no other States than theirs, they had the right to permit or forbid the entrance into it, just as into their towns and their provinces.

§ 295. The parts of the sea held by a nation are under its jurisdiction.

When a Nation takes possession of certain parts of the sea it obtains sovereignty over them as well as ownership, for the same reason which we advanced in speaking of land (§ 205). These parts of the sea are under the jurisdiction of the Nation and are included in its territory. The sovereign has authority over them, makes laws with respect to them, and may punish the violation of those laws; in a word, he has the same general rights there as on land, namely, all those conferred upon him by the law of the State.

It is true, however, that sovereignty and ownership are not essentially inseparable, even in the case of a sovereign State.(*a*) Just as a Nation might have the ownership of an area of land or sea, without having sovereignty over it, so it might happen to have sovereignty over a place the ownership of which, or the property rights with respect to its use, might be vested in another Nation. But the presumption is always that when a Nation has the ownership over a place it has also the eminent domain, or sovereignty (§ 205). The inference from sovereignty to ownership is not so natural, for a Nation may have good reason for asserting sovereignty over a territory, and especially over an area of the sea, without claiming any sort of ownership over it. The English have never made pretense to the ownership of all the seas over which they claimed sovereignty.

This is the extent of the ground we meant to cover in this first book. To go into greater detail over the duties and rights of a Nation, considered by itself, would lead us too far. Such details must be sought for in special treatises on public law and politics. We are far from flattering ourselves that we have not omitted any important point. There is here presented only the rough outline of an extensive subject. But intelligent readers will easily supply for all our omissions by making application of the general principles. We have given the greatest care to put these principles on a firm basis and to develop them with clearness and precision.

(*a*) See below, Book II, § 83.

THE LAW OF NATIONS.

BOOK II.

Nations Considered in Their Relations with Other Nations.

CHAPTER I.

Common Duties, or Offices of Humanity, Between Nations.

§ 1. Foundation of the common and mutual duties of nations.

The principles we are about to lay down will seem very inconsistent with the policies of cabinet ministers, and, unhappily for the human race, many of those astute leaders of Nations will turn into ridicule the doctrines in this chapter. Nevertheless, let us boldly set forth the duties which the Law of Nature imposes upon Nations. Shall we fear ridicule when Cicero has spoken before us? That great man held the reins of the most powerful State that ever existed and he never showed his greatness more than when he spoke as a jurist. He considered that the safest policy for a State lay in an exact observance of the Law of Nature. I have already quoted in the preface this noble passage: *Nihil est quod de republica putem dictum, et quo possim longius progredi, nisi sit confirmatum, non modo falsum esse illud, sine injuria non posse, sed hoc verissimum, sine summa justitia rempublicam regi non posse.*(*a*) I might say, with good reason, that by the words *summa justitia* Cicero means that universal justice which consists in the entire fulfillment of the natural law. But he explains himself elsewhere more in detail on the subject, and he makes it clear enough that he does not limit the mutual duties of men towards one another to the observance of strict justice. "Nothing," he says, "is more conformable to nature, or more capable of affording true satisfaction, than to undertake, after the example of Hercules, even the most painful labors for the preservation and welfare of all nations." *Magis est secundum naturam, pro omnibus gentibus, si fieri possit, conservandis aut juvandis, maximos labores molestiasque suscipere, imitantem Herculem illum, quem hominum fama, beneficiorum memor, in concilium coelestium collocavit; quam vivere in solitudine, non modo sine ullis molestiis, sed etiam in maximis voluptatibus, abundantem omnibus copiis, ut excellas etiam pulchritudine et viribus. Quocirca optimo quisque et splendidissimo ingenio longe illam vitam huic auteponit.*(*b*) In the same chapter Cicero expressly refutes those who hold that the duties, which they acknowledge with respect to their fellow-citizens, do not extend to aliens. *Qui autem Civium rationem dicunt habendam, externorum negant, hi dirimunt communem humani generis societatem; qua sublata, beneficientia, liberalitas, bonitas, justitia funditus tollitur: quæ qui tollunt, etiam adversus Deos immortales impii judicandi sunt; ab iis enim constitutam inter homines societatem evertunt.*

And why may we not hope still to find among those who govern some wise statesmen who are convinced of the great truth that even for sovereigns and States the path of virtue is the surest way to prosperity and happiness? There is at least one result that may be looked for from the open declaration of sound principles, namely, that they will constrain even those who care least about them to keep within certain bounds lest they altogether disgrace themselves. To fancy that men, and particularly men in power, are going to follow strictly the Laws of Nature, would be grievous self-deception; but to lose all hope of making an impression upon any of them would be to despair of human nature.

Since Nations are bound by the Law of Nature mutually to promote the society of the human race (Introd., § 11), they owe one another all the duties which the safety and welfare of that society require.

(*a*) Fragm. ex lib. II De Republica.

(*b*) De Officiis, Lib. III. cap. V.

§ 2. Offices of humanity and their foundation.

The *offices of humanity* consist in the fulfillment of the duty of mutual assistance which men owe to one another because they are men, that is to say, because they are made to live together in society, and are of necessity dependent upon one another's aid for their preservation and happiness, and for the means of a livelihood conformable to their nature. Now, since Nations are not less subject to the laws of nature than are individuals (Introd., § 5), the duties which a man owes to other men, a Nation owes, in its way, to other Nations (Introd., § 10). Such is the foundation of those common duties, those offices of humanity, which Nations mutually owe one another. In general, they consist in doing all in our power for the welfare and happiness of others, as far as is consistent with our duties towards ourselves.

§ 3. General principle of all the mutual duties of nations.

The fact that man, by the very nature of his being, can not be sufficient unto himself, nor continue and develop his existence, nor live happily without the assistance of his fellow-men, makes it clear that it is man's destiny to live in a society where the members give one another mutual aid, and therefore that all men are bound by the very nature of their being to work together for the mutual improvement of their condition in life. The surest means of succeeding in this duty is for each one to labor first for himself and then for others. Hence it follows that whatever we owe to ourselves we owe also to others, as far as they are really in need of our help and we can give it to them without neglecting ourselves. Since, then, one Nation owes, in its way, to another Nation the duties that one man owes to another, we may boldly lay down this general principle: Each State owes to every other State all that it owes to itself, as far as the other is in actual need of its help and such help can be given without the State neglecting its duties towards itself. Such is the eternal and immutable law of Nature. Those who may find it completely subversive of wise statesmanship will be reassured by the two following considerations.

(1) Sovereign States, or the political bodies of which society is composed, are much more self-sufficient than individual men, and mutual assistance is not so necessary among them, nor its practice so frequent. Now, in all matters which a Nation can manage for itself, no help is due it from others.

(2) The duties of a Nation to itself, and especially the care of its own safety, call for much more circumspection and reserve than an individual need exercise in giving assistance to others. We shall develop this remark presently.

§ 4. Duties of a nation with respect to the preservation of others.

All the duties of a Nation towards itself have for their object the preservation of the Nation and the perfecting both of itself and of the circumstances in which it is placed. The details which we have given in the first book of this treatise will serve to indicate the various matters with respect to which one State can and should assist another. Hence, when the occasion arises, every Nation should give its aid to further the advancement of other Nations and save them from disaster and ruin, so far as it can do so without running too great a risk. Thus, when a neighboring State is attacked unjustly by a powerful enemy which threatens to crush it, if you can defend it without exposing yourself to great danger there is no question but that you should do so. Do not raise the objection that a sovereign has not the right to expose the life of his soldiers for the safety of a foreign Nation with which he has not contracted a defensive alliance. He may happen to have like need of help; and therefore by putting into force the spirit of mutual assistance he is promoting the safety of his own Nation. Statecraft thus goes hand in hand with obligation and duty, for princes have an interest in checking the advance of an ambitious ruler who seeks to increase his power by subduing his neighbors.

When the United Provinces were threatened with subjection to the yoke of Louis XIV a powerful league was formed in their behalf.(*a*) When the Turks laid siege to Vienna the brave Sobieski, King of Poland, saved the House of Austria,(*b*) and perhaps all Germany and his own Kingdom.

§ 5. It should assist a nation suffering from famine and other disasters.

For the same reason, if a Nation is suffering from famine, all those who have provisions to spare should assist it in its need, without, however, exposing themselves to scarcity. But if that Nation can pay for the provisions furnished it, they may very properly be sold at a fair price, for there is no duty of giving it what it can obtain for itself, and consequently no obligation of making a present of things which it is able to buy. To give assistance in such dire straits is so instinctive an act of humanity that hardly any civilized Nation is to be found which would refuse absolutely to do so. The great Henry IV could not withhold help even from hardened rebels who sought his destruction.(*c*)

Whatever be the calamity afflicting a Nation, the same help is due to it. Public collections have been ordered in small States of Switzerland for the relief of certain towns and villages of neighboring States which had been destroyed by fire, and abundant help has been given them without the good work being hindered by differences of religion. The misfortunes of Portugal have given England an opportunity of fulfilling the duties of humanity with the noble generosity characteristic of a great Nation. At the first news of the disaster of Lisbon, Parliament voted the sum of a hundred thousand pounds sterling for the relief of the afflicted people; the King added a considerable amount to the sum; vessels were hastily laden with provisions and articles of every sort which might be needed, and their arrival convinced the Portuguese that differences of religious belief and worship do not deter persons who acknowledge the claims of humanity. On the same occasion the King of Spain manifested his humanity, his generosity, and his sympathy for a close ally.

§ 6. And contribute to the advancement of others.

A Nation should not limit its good offices to the preservation of other States, but in addition it should contribute to their advancement according to its ability and their need of its help. We have already shown (Introd., § 13) that this general obligation is imposed upon it by human society. It is appropriate here to develop that obligation in some detail. A State is more or less perfect according as it is more or less adapted to attain the end of civil society, which consists in procuring for its citizens the necessities, the comforts, and the pleasures of life, and in general their happiness; and in securing to each the peaceful enjoyment of his property and a sure means of obtaining justice, and finally in defending the whole body against all external violence (Book I, § 15). Every Nation should therefore give its aid when the occasion arises, and according to its ability, not only to enable another Nation to enjoy those advantages, but to put it in a way to procure them itself. Thus, if an uncivilized State should desire to improve its condition and should apply to a civilized State for teachers to instruct it, the latter ought not to refuse them. The State which has the happiness of being ruled by wise laws should consider it a duty to impart them to others when the occasion arises. Thus, when the wise and exemplary Romans sent envoys to Greece in search of good laws, the Greeks did not refuse so reasonable and praiseworthy a request.

§ 7. But not by force.

But while a Nation is bound to further, as far as it can, the advancement of others, it has no right to force them to accept its offer of help. The attempt to do so would be a violation of their natural liberty. Authority is needed if one is

---

(*a*) In 1672. (*b*) He defeated the Turks and raised the siege of Vienna in 1683.

(*c*) During the famous siege of Paris.

to constrain others to receive a benefit, whereas Nations are absolutely free and independent (Introd., § 4). Those ambitious European States which attacked the American Nations and subjected them to their avaricious rule, in order, as they said, to civilize them, and have them instructed in the true religion—those usurpers, I say, justified themselves by a pretext equally unjust and ridiculous. It is surprising to hear the learned and judicious Grotius tell us that a sovereign can justly take up arms to punish Nations which are guilty of grievous crimes against the natural law, which "treat their parents in an inhuman manner, like the Sogdians, which eat human flesh, like the ancient Gauls," etc.(*a*) He was led into that mistake from his attributing to every free man, and hence to every sovereign, a certain right to punish crimes in grievous violation of the laws of nature, even when those crimes do not affect his rights or his safety. But we have shown (Book I, § 169) that the right to punish belongs to men solely because of the right to provide for their safety; hence it only exists as against those who have injured them. Did not Grotius perceive that in spite of all the precautions added in the following paragraphs, his view opens the door to all the passions of zealots and fanatics, and gives to ambitious men pretexts without number? Mahomet and his successors laid waste to and subdued Asia to avenge the disbelief in the unity of God; and all those whom they regarded as *associateurs*, or idolaters, were victims of their fanaticism.

§ 8. The right to ask for offices of humanity.

Since these duties or offices of humanity should be shown by one Nation to another, according as the one has need of them and the other can reasonably extend them, and since every Nation is free, independent, and sovereign in its acts, it is for each to decide whether it is in a position to ask or to grant anything in that respect. Thus (1) every Nation has a perfect right to ask for assistance and offices of humanity from another if it thinks it has need of them. To prevent it from doing so would be to do it a wrong. If it asks for them without need, it acts contrary to its duty, but its judgment on the point is free from control. It has the right to ask for them, but not to demand them.

§ 9. The right to decide whether they can be granted.

For (2) since these offices are only due in a case of need, and from a State which can render them without neglecting its duty to itself, it belongs, on the other hand, to the Nation of whom help is requested to decide whether the case really calls for it, and whether the Nation is in a position to grant it with due regard to its own safety and welfare. For example, if a Nation is in need of grain and seeks to buy it of another, it is for the latter to judge whether, in complying with the request, it will not run the risk of being itself impoverished; and if it refuses to sell, the other must abide by the refusal patiently. Russia has recently given an example of a wise fulfillment of these duties. It has generously assisted Sweden when threatened with a famine; but it has refused to other powers the right to purchase wheat in Livonia, being in need of it itself and having weighty motives of State policy besides.

§ 10. A nation may not force another to perform those offices the refusal of which is not an injury.

A Nation has, therefore, only an imperfect right to offices of humanity; it can not force another Nation to perform them. If the other refuses them without good reason it offends against charity, which consists in acknowledging an imperfect right of another; but it does no injury thereby, since injury or injustice results from denying a perfect right.

§ 11. Mutual love of nations.

It is impossible for Nations to fully acquit themselves of their mutual duties if they do not love one another. Offices of humanity should proceed from that pure source, and they will thus retain the character and perfection of it. Then we

---

(*a*) *De Jure Belli et Pacis*, Lib. II, cap. XX, § 40.

shall see Nations aid one another with sincerity and true kindness, labor earnestly for their common happiness, and promote peace without jealousy and without distrust.

§ 12. Each should cultivate the friendship of the others.

We shall see a true friendship reign among them, which will consist in mutual affection. Every Nation is bound to cultivate the friendship of other Nations and to avoid carefully whatever might arouse their enmity. Wise and prudent Nations often do so from motives of present and direct interest; a higher interest, more universal and less direct, is too rarely the motive of statesmen. If it is undeniable that men should love one another, as well in response to the designs of nature and in fulfillment of the duties it imposes upon them, as for their own private advantage, can it be doubted that Nations are mutually bound by the same obligation? Is it within the power of men, by dividing into different political groups, to break the bonds of that universal society which nature has established among them?

§ 13. And improve itself, so as to be of service to the others and set them good example.

If a man ought to endeavor to become of service to other men, and a citizen of service to his fellow-citizens, a Nation, in seeking its own advancement, should propose to itself to become thereby more capable of furthering the advancement and happiness of other Nations. It should endeavor to set them good example and avoid any act to the contrary. It is natural to men to imitate others; the virtues of a great Nation are sometimes imitated, and its vices and faults more frequently.

§ 14. And take care of their renown.

Since its renown is of such importance to a Nation, as we have shown in a special chapter, (*a*) the duty of a Nation towards others includes even a care for their renown. In the first place, it should endeavor, on occasion, to enable them to merit true renown; secondly, it should show them all due honor itself, and endeavor to have others do so, as far as lies in its power; finally, far from increasing the bad effect which certain slight faults of other nations may produce, it should charitably extenuate them.

§ 15. Religious differences should not preclude the offices of humanity.

It is evident from the principles on which we have based the obligation of extending the offices of humanity that it is founded solely upon man's human nature. Hence no Nation may refuse those offices to another Nation under pretext that the latter professes another form of religious belief. No more is needed to merit them than to be one's fellow-man. Conformity of belief and worship may well become a new bond of friendship between Nations, but religious differences should not make men put aside their character as men or the feelings attendant upon that character. We have already related (§ 5) some examples worthy of imitation; let us here do justice to the wise Pontiff who at present occupies the Roman See and has just given a remarkable example in point, which is well worthy of praise. This Prince, learning that there were several Dutch vessels detained at Civita Vecchia through fear of the Algerian corsairs, ordered the Papal frigates to escort them on their way; and the Papal nuncio at Brussels received instructions to signify to the Minister of the States-General that His Holiness made it a rule to protect commerce and to extend the offices of humanity without any regard to religious differences. Such exalted sentiments can not fail to create profound respect for Benedict XIV even among Protestants.

§ 16. Rule and measure of the offices of humanity.

What would be the happiness of the human race if these benevolent precepts of nature were everywhere observed. Nations would mutually exchange their products and their knowledge; profound peace would reign upon the earth and would enrich it with its precious fruits; industry, science, and art would be devoted to promoting our happiness no less than satisfying our needs. Violent means would no longer be used to decide such differences as might arise. They would

---

(*a*) Book I, ch. xv.

be terminated by forbearance and by the application of principles of justice and equity. The world would take on the appearance of a great Republic, all men would live together as brothers, and each would be a citizen of the universe. Why should the idea be but a beautiful dream, when it is based upon the very nature of man's being?(a) But the inordinate passions and mistaken self-interest of men will keep them from ever realizing it. Let us examine, then, the limitations which the actual state of mankind and the ordinary conduct and policy of Nations may put upon the practice of these precepts of nature, in themselves so excellent.

The Law of Nature can not condemn the good to make themselves the prey of the wicked and the victims of their injustice and ingratitude. From sad experience we know that the majority of Nations only seek to strengthen and enrich themselves at the expense of others, to dominate over them, and even to oppress them and subject them to their yoke, should the oppportunity present itself. Prudence will never allow us to increase the strength of an enemy or of one in whom we perceive the desire to despoil and oppress us, for the care of our own safety forbids our doing so. We have seen (§§ 3 and foll.) that a Nation only owes to others its assistance and the offices of humanity in so far as it can extend them without failing in its duties to itself. Hence it clearly follows that although a Nation is bound by the universal law of charity to extend at all times and to all persons, even its enemies, such assistance as can only tend to render them more upright and more honorable, because no harm can be feared from granting it, the Nation is not bound to give them any help which might probably be used to its own destruction. It thus happens, (1) that the exceeding importance of trade, not only as a means of supplying the necessities and comforts of life, but also as a source of strength to the State by furnishing it with a means of defense against its enemies, together with the insatiable greed of Nations which seek to draw it all to themselves and take exclusive possession of it—these circumstances, I say, authorize a Nation which is in control of a branch of commerce or which possesses the secret of some important manufacture to keep to itself that source of wealth and, far from imparting it to them, to take measures to prevent them from obtaining possession of it. But where there is question of the necessities or conveniences of life the Nations ought to sell them to others at a just price and not make use of its monopoly as a means of oppression. Commerce is the chief source of the greatness, power, and security of England; who will blame her if she endeavors, by all honest and just means, to keep control of its various branches?

(2) With respect to things which are of more direct and special use in time of war, there is no obligation upon a Nation to share them with others, whom it suspects ever so little, and prudence even forbids it to do so. Thus it was very justly forbidden by law at Rome to communicate to barbarian Nations the art of constructing galleys. So also England has provided by law that the best method of constructing ships should not be made known to foreigners.

This caution should be carried much further with respect to Nations more justly suspected. Thus when the power of the Turks was, so to say, on the ascendant and conquering all before it, all Christian Nations, independently of any religious antagonism, had reason to regard them as enemies; even the most distant Nations, who came in no actual conflict with them, might well break off all commerce with a power which avowedly sought to subdue by force of arms all those who would not recognize the authority of its prophet.

(a) Let us once more rest upon the authority of Cicero. "All men," says that noble philosopher, "should put before them the principle that the welfare of the individual and of the community is the same, for if each seeks his own welfare alone, all human society is broken up. And if nature ordains that man wish well to men, whoever they be, for the precise reason that they are men, it follows that it is the intention of nature that the welfare of one another should be of common concern to all." Ergo unum debet esse omnibus propositum, ut eadem sit utilitas uniuscujusque et universorum: quam si ad se quisque rapiat, dissolvetur omnis humana consortio. Atque si etiam hoc natura præscribit, ut homo homini, quiscunque sit, ob eam ipsam causam, quod is homo sit, consultum velit, necesse est secundum eandem naturam omnium utilitatem esse communem. (*De Officiis*, Lib. III, cap. VI.)

§ 17. Special limitation upon the prince.

Let us further remark, with special reference to the Prince, that in this matter he may not be unreservedly guided by magnanimous and disinterested sentiments, in which self-interest generously gives way to the good of others; for it is not his own interests that are at stake here, but those of the Nation which has committed itself to his care. Cicero says that a noble and high-minded soul despises pleasures, riches, and life itself, and accounts them as naught, when there is question of the common welfare.(*a*) He is right, and such sentiments are worthy of admiration in a private person. But we can not be generous with the property of another. The ruler of a Nation, when dealing with public affairs, may only be generous with moderation, and in so far as may be to the renown of the State and its actual advantage. As to the common welfare of human society, he should have the same care for it as the Nation which he represents would be bound to have if it had itself control of its affairs.

§ 18. No nation may injure another.

But if the duties of a Nation towards itself limit the obligation of extending the offices of humanity, they can not qualify the prohibition not to do wrong to others or cause them any harm, in a word, to *injure* them, if I may thus render the Latin word *lædere*. To hurt, to offend, to do wrong, to cause harm or prejudice, to wound, have not all precisely the same meaning. To *injure* anyone is, in general, to detract from his personal qualities or to diminish the advantages of his situation in life.

If every man is bound by his very nature to labor for the advancement of others, with much greater reason is he forbidden to diminish the blessings they already enjoy. The same duties are imposed upon Nations (Introd., §§ 5, 6). Hence none of them should do any act tending to deprive the others of their advantages, or to retard their progress, that is to say, to *injure* them. And since the perfection of a Nation consists in its being in a position to attain the end of civil society, and since its circumstances are perfect when it is not wanting in the things needed for that end (Book I, § 14), no State has the right to prevent another from attaining the end of civil society, or to render it incapable of doing so. Upon this general principle it is unlawful for Nations to do any act tending to create trouble in another State, to stir up discord, to corrupt its citizens, to alienate its allies, to stain its renown, or to deprive it of its natural advantages.

However, it will easily be understood that the neglect or even the refusal to fulfill these common duties of humanity is not an *injury*. To neglect or to refuse to further the advancement of a Nation does not constitute an act of aggression.

Moreover, it must be observed that if, in making use of our right or in fulfilling a duty to ourselves or to others, there results from our act some harm to another either in his person or in his circumstances, we are not guilty of doing an *injury*. We are but doing what we have a right to do, or even what we ought to do; the harm which results to another is not intended by us, and is a mere accident, to be imputed to us or not, according to the special circumstances of the case. For example, in a case of lawful self-defense the damage we inflict upon our assailant is not what we aim at; we are acting with a view to our safety and are making use of our right, so that our assailant is alone responsible for the harm he brings on himself.

(*a*) *De Officiis*, Lib. III, cap. V.

§ 19. Offenses.

Nothing is more opposed to the duties of humanity, or more contrary to the social intercourse which should be cultivated by Nations, than *offenses* or acts which are a cause of just displeasure to others. Every Nation should therefore be careful not to give any real cause of offense to another Nation. I say *real*, because if it should happen that, when we are making use of our rights or fulfilling our duties, another takes offense at our conduct, that is his fault, not ours. So much bitterness is caused between Nations by one giving offense to another that they should avoid giving even an ill-founded cause of offense when they can do so without difficulty and without failing in their duties. Certain medals and offensive jests irritated Louis XIV against the United Provinces and brought on his attack upon them in 1672, which proved the destruction of that Republic.

§ 20. Evil practice of the ancients.

The principles laid down in this chapter, these sacred precepts of nature, were for a long time unknown among Nations. The ancients did not acknowledge any duty towards Nations to which they were not bound by a treaty of friendship. Jews in particular made it a point of patriotism to hate other Nations, and they were in consequence reciprocally hated and despised. Finally the voice of nature came to be heard among civilized Nations, and they realized that all men are brothers.(*a*) When will the happy time come when they shall act upon their belief?

(*a*) See above, § 1, a noble passage from Cicero.

CHAPTER II.

Mutual Commerce Between Nations.

§ 21. General obligation of nations to trade with one another.

All men should properly find upon the earth the things of which they stand in need. They took them, so long as the primitive community of goods lasted, wherever they found them, provided no one else had already taken them for his own use. The introduction of ownership and private property could not deprive men of a right essentially theirs, and consequently it could only be permitted on condition of leaving them some general means of procuring what was necessary or useful to them. That means is commerce, and by it every man can still provide for his needs. Now that things have become private property, one may no longer take possession of them without the owner's consent, nor can they ordinarily be had for nothing; but they can be bought, or other things of equal value exchanged for them. Men are therefore bound to carry on such commerce if they would not depart from the views of nature, and the obligation extends to entire Nations or States as well (Introd., § 5). Nature rarely produces in one district all the various things men have need of; one country abounds in wheat, another in pastures and cattle, a third in timber and metals, etc. If all these districts trade with one another, as nature intended, none of them will be without what is necessary and useful to them, and the intention of nature, the common mother of mankind, will be fulfilled. Moreover, since one country is better adapted for growing one product than another, for example, grapes rather than grain, if trade and barter take place between them, each Nation will be assured of satisfying its wants and will use its land and direct its industries to the best advantage, so that mankind as a whole will gain thereby. Such is the foundation of the general obligation upon Nations to promote mutual commerce with one another.

§ 22. They should facilitate commerce.

Each Nation should therefore not only engage in such commerce, as far as it reasonably can, but should even protect and foster it. The care of public roads, the safety of travelers, the establishment of ports, markets, and well-conducted fairs, all contribute to that end; and if expenditures must be made, each Nation, as we have already remarked (Book I, § 103), may compensate itself by tolls and other duties in due proportion to its outlay.

§ 23. Freedom of commerce.

Since freedom of commerce helps greatly to further it, Nations have also the duty of maintaining this freedom as far as possible, and they should not restrict it in any way without necessity. Hence the special rights and privileges which exist in many places and which are burdensome to commerce are to be condemned, unless they are founded upon very important reasons of public policy.

§ 24. Right to trade, which belongs to nations.

Every Nation, by virtue of its natural liberty, has the right to trade with such Nations as are open to commerce; and any attempt to interfere in the exercise of its right would be an act of aggression. The Portuguese, at the time of their power in the East, sought to exclude the other Nations of Europe from all commerce with the East Indies. But the claim, being as unjust as it was fanciful, was contemptuously disregarded, and the acts of violence in support of it were considered by the other Nations as just cause for war. The common right of Nations to trade is now generally recognized under the name of the *freedom of commerce.*

§ 25. Each nation is judge whether it is in a position to carry on trade.

But while a Nation has, in general, the duty of promoting commerce with others, and while each Nation has the right to trade with those Nations which are open to trade, on the other hand it should avoid all commerce which is disadvantageous or dangerous to the State in any respect (Book I, § 98); and since its duty to itself prevails over its duty to others, should the two conflict, a Nation has full right to be guided in the matter by considerations of utility and safety. We have already seen (Book I, § 92) that it is for each Nation to decide whether it is convenient to carry on this or that branch of trade. Hence it may accept or refuse an offer of trade from foreign Nations without their being able to accuse it of injustice or to ask reasons, much less to use constraint. It is free to carry on its affairs as it pleases, and is not accountable to anyone. The obligation to trade with others is in itself an imperfect one (Introd., § 17) and gives rise to no more than an imperfect right, while it ceases entirely should such commerce prove harmful. When the Spaniards attacked the American tribes on the pretext that the latter refused to trade with them, they were but attempting to conceal their insatiable avarice.

§ 26. Necessity of commercial treaties.

These brief remarks, taken in connection with what we have already said on the subject (Book I, Chap. VIII), may suffice to show the principles of the natural Law of Nations with respect to the mutual commerce of Nations. It is not difficult to lay down the general lines of this duty, which is prescribed by the natural law for the good of the society of the whole human race. But as each Nation is only obliged to trade with the others in so far it can do so without being wanting in its duty to itself, and as it ultimately depends upon the judgment of each State to say what it can and should do under the circumstances, Nations can only rely upon the general liberty which belongs to all to carry on commerce, and in addition upon certain imperfect rights which depend for their exercise upon the judgment of another, and are in consequence always uncertain. Hence if they wish to put their commercial relations upon a definite and permanent footing, they must have recourse to treaties.

§ 27. General basis of these treaties.

Since a Nation has full right to be guided in its commercial relations by considerations of utility or safety, it may make such treaties on the subject as it thinks fit, and third parties may not reasonably take it as an offense, provided those treaties do not attack their perfect rights. If a Nation, by making certain agreements, cuts itself off from the general commerce which nature intended Nations to carry on, and does so without necessity or urgent motives, it is wanting in its duty; but as it has the sole right of deciding what its duty is (Introd., § 16), other Nations, out of deference to its natural liberty, must put up with its decision, and even suppose that it is acting for good reasons. Hence all commercial treaties which do not transgress the perfect rights of another are permissible between Nations, and no opposition may be made to their execution; but those alone are intrinsically just and commendable which are drawn up with a consideration for the general interest of mankind, as far as it is possible or reasonable to do so in the particular case.

§ 28. Duty of nations making these treaties.

Owing to the binding character of express promises and agreements, a wise and prudent Nation will carefully examine and maturely consider a treaty of commerce before concluding it, and will take care not to bind itself to anything contrary to its duties to itself and to others.

§ 29. Perpetual, temporary, and revocable treaties.

Nations may embody in their treaties such provisions and conditions as they find convenient. They may stipulate that the treaty is to be perpetual, or temporary, or subject to certain contingencies. The more prudent course is ordinarily not to bind oneself in perpetuity, since it may happen that in the course of time circumstances will arise which might render the treaty very burdensome to one of the contracting parties. Nations may also make treaties which shall be revocable at will, so that the rights granted by them are precarious. We have already stated (Book I, § 94) that a mere grant of permission does not confer, any more than long usage (*Ibid.*, § 95), a perfect right to carry on commerce. But those cases must not be confused with treaties, not even with those treaties which only confer precarious rights.

§ 30. Rights can not be granted to a third party contrary to the terms of the treaty.

Once a Nation has bound itself by treaty, the terms of the treaty may prevent it from exercising the liberty it previously had of granting rights to others in conformity with the duties of humanity or with the general obligation of mutual commerce; for it may only do for another what is in its power, and when it has deprived itself of the right to dispose of a thing, that thing is no longer in its power. Hence when a Nation has agreed with another to sell to it alone certain wares or provisions, wheat, for example, it can no longer sell them to others; and in like manner a contract to buy certain things from that Nation alone is equally binding.

§ 31. How, by treaty with one nation, commerce with others may be prevented.

But it may be asked on what ground and at what times has a Nation the right to enter into an agreement which will prevent it from fulfilling its duties towards others? Since the duties we owe to ourselves prevail over our duties to others, if a Nation should find that a treaty of this character will be to its welfare and advantage, it has unquestionably the right to enter into it; and far from breaking up thereby the general commerce of Nations, it merely causes one branch of its commerce to follow a definite channel, or it assures to one particular Nation certain things of which that Nation stands in need. If a State which is in need of salt can secure a supply from another State by agreeing to sell its wheat or its cattle to that State only, can it be questioned that it has the right to conclude so beneficial a treaty? For in such a case it is merely disposing of its wheat or its cattle for the satisfaction of its own wants. But according to the principles laid down in § 28, agreements of this character should not be made without very good reasons. However, whether the reasons are good or not, the treaty is valid, and other Nations have no right to contest it (§ 27).

§ 32. A nation may restrict its rights of commerce in favor of another nation.

Every one is at liberty to renounce his right; hence a Nation may restrict its rights of commerce in favor of another Nation, and may agree not to traffic in a given commodity, or to trade with a certain country, etc. If it violates the agreement, it transgresses the perfect right of the Nation with which it has contracted, and the latter is justified in using constraint. No injury is done to the natural freedom of commerce by treaties of this character; for that liberty consists merely in the fact that no Nation may be interfered with in its right to carry on commerce with those Nations which consent to trade with it; and each remains free to carry on or to give up a particular branch of commerce, according to its judgment of what is best for the State.

§ 33. It may obtain a monopoly of a branch of commerce.

Nations do not carry on commerce merely for the sake of obtaining what is necessary or useful, but they make it a source of riches as well. Now, where a profit is to be made, all Nations have an equal right to a share in the undertaking, but the most industrious of them may lawfully get ahead of the others and take possession of an advantage which goes to the first occupant; and there is nothing to prevent its securing the advantage for itself alone, provided it can find some lawful means of doing so. When, therefore, certain things are produced by only one Nation, another Nation may lawfully obtain by treaty the sole privilege of buying them, in order afterwards to sell them to the rest of the world. And since it is a matter of indifference to Nations from what source they obtain the things they have need of, provided they can be got at a just price, a monopoly possessed by one Nation is not contrary to the general duties of humanity, if it be not used in order to hold the articles at an unjust and unreasonable price. But if so used the Nation violates the natural law in depriving other Nations of one of the conveniences or comforts of life which nature intended all men to enjoy, or in forcing them to buy it at too high a price; but no injury is thus done them, because, strictly speaking and by the external law, the owner of a thing has the right to keep it or put what price he pleases upon it. Thus the Dutch, by a treaty with the King of Ceylon, have obtained control of the cinnamon trade, and so long as they keep their profits within just bounds other Nations have no right to complain.

But if it were a question of one of the necessaries of life, which the possessor of the monopoly wished to hold at an excessive price, the other Nations would have the right, from motives of personal welfare and for the good of society at large, to unite together and force the avaricious oppressor to come to terms. The right to the necessaries of life is quite distinct from the right to conveniences and comforts, which one can do without if they are too dear. It would be unreasonable that the sustenance and well-being of Nations should depend upon the avarice or whim of one of them.

§ 34. Consuls. One of the practices of modern times which is very useful to commerce is that of appointing consuls. Consuls are persons sent by a Nation to the chief commercial towns, and especially to the ports of foreign countries, with a commission to watch over the rights and privileges of their Nation, and to settle differences that may arise between its merchants. When a Nation has large trading relations with a country it is convenient to have a consul there, and the State which permits the commerce to be carried on, and which therefore naturally desires to promote it, will on that ground admit the consul. But as Nations are not under an absolute obligation to receive consuls, a Nation which wishes to send one must obtain the right to do so in its treaty of commerce.

The consul, being intrusted with the affairs of his sovereign and receiving orders from him, remains subject to him and accountable to him for what he does.

Consuls are not diplomatic agents, as will appear from our description of such agents in the fourth book of this treatise, and can not claim their privileges. However, as they bear a commission from their sovereign and are received in this quality by the sovereign in whose State they reside, they must be accorded, to a certain extent, the protection of the Law of Nations. The sovereign who receives them impliedly promises to give them such liberty of action and such protection as the duties of their office require; otherwise the agreement to receive them would be to no effect.

In the first place, the duties of a consul require that he should not be a subject of the State in which he resides; for he would then be obliged to follow its orders and would not be free to attend to his business.

His duties would likewise seem to require that he should be independent of the ordinary criminal jurisdiction of his place of residence, so as not to be interfered with or imprisoned, unless he commit a grievous offense against the Law of Nations.

And although the importance of a consul's duties is not great enough to obtain for his person the inviolability and absolute independence which diplomatic agents enjoy, still, as he is under the special protection of the sovereign who employs him, and is intrusted with his interests, if he should commit any crime, the respect due to his master requires that he be sent back to him for punishment. This is the practice of States which desire to preserve friendly relations with one another.

But the safest course is to settle all these matters, when one can do so, by the treaty of commerce.

Wicquefort, in his treatise on Ambassadors, Book I, § 5, says that consuls "do not enjoy the protection of the Law of Nations, and that they are subject, in both civil and criminal matters, to the jurisdiction of their place of residence." But the instances he relates contradict his statement. The States-General of the United Provinces, whose consul had been "insulted and arrested" by the governor of Cadiz, "complained of the act to the Court of Madrid as a violation of the Law of Nations. And in the year 1634, the Republic of Venice considered breaking off relations with Pope Urban VIII because of violence offered by the governor of Ancona to the Venetian consul." The governor, suspecting that the Venetian consul had given out certain information hurtful to the commerce of Ancona, seized his furniture and his papers, had him summoned into court, sentenced on default, and banished, on the pretext that he had, "in violation of the law, caused goods to be unloaded during a time of quarantine." In addition the governor imprisoned the consul's successor. The Venetian Senate warmly insisted upon reparation being made, and by the intervention of the French ministers, who feared an open breach, the Pope obliged the governor to give satisfaction to the Republic.

In default of treaty stipulation, custom must serve as the rule on such occasions; for when a State receives a consul without defining the conditions of his admittance, it is regarded as receiving him upon the customary footing.

CHAPTER III.

The Dignity and Equality of Nations. Titles and other Marks of Honor.

§ 35. The dignity of nations or sovereign states.

Every Nation, every sovereign and independent State, is deserving of honor and respect as having a recognized position in the great society of the human race, as being independent of any power on earth, and as possessing, by reason of its numbers, a greater importance than belongs to the individual. The sovereign represents the entire Nation of which he is head, and unites in his person the attributes which belong to the Nation. No individual, however free and independent, can stand in comparison with a sovereign; it would be as if a single man were to claim the same importance as belongs to a body of his equals. Nations and sovereigns have, therefore, both the obligation and the right to uphold their dignity and to cause it to be respected, as a thing of importance to their peace and their security.

§ 36. Their equality.

We have already remarked (Introd., § 18) that nature has established a perfect equality of rights among independent Nations. In consequence, no one of them may justly claim to be superior to the others. All the attributes which one possesses in virtue of its freedom and independence are possessed equally by the others.

§ 37. Precedence.

Hence, since precedence or priority of rank is a mark of superiority, no Nation or sovereign may claim a natural right to it. Why should Nations which are not subject to another Nation show deference to it against their will? However, as a large and powerful State has a much more important position in the universal society than that of a small State, it is reasonable that the latter should defer to the former on occasions where one must give place to the other, as in an assembly. The deference thus shown is a matter of mere ceremony, which takes away nothing from their essential equality and indicates only a priority of position, the first place among equals. The others will naturally give first place to the most powerful Nation, and it would be both useless and ridiculous for the weakest of them to attempt to contest it. The great age of a State will likewise be a consideration on such occasions; a new comer among States may not dispossess another of the honors it is enjoying, and very strong reasons are needed to obtain precedence in such a case.

§ 38. The form of government does not affect the question.

The form of a Nation's government naturally does not affect the question of rank. The honor due to a Nation belongs fundamentally to the body of the people; and it is shown to the sovereign merely as the representative of the Nation. Is a State to be more or less worthy of honor according as it is governed by one man or by several? In these days kings claim superiority of rank over republics; but the claim has no other foundation than superiority of power. In former times the Roman Republic looked upon kings as far beneath it in rank; the monarchs of Europe came in contact with weak republics and refused to admit them on a basis of equality. Venice and the United Provinces have obtained, as republics, the honors of crowned heads; but their ambassadors yield precedence to those of kings.

§ 39. A state should uphold its rank in spite of changes in its form of government.

Following the principles we have just laid down, if a Nation should happen to change its form of government it will not lose the rank and the honors of which it is in possession. When England drove out its Kings, Cromwell would suffer no diminution in the honors which had been shown to the crown or to the Nation; and he saw to it that the English ambassadors retained the rank they had always held.

§ 40. Treaties and established custom must be followed.

If the relative rank of Nations has been fixed by treaty, or by long custom founded upon implied consent, the established rule must be conformed to. To deny the right of a prince to the rank he has thus acquired would be regarded as an injury, since it would be a mark of contempt or a violation of the agreement guaranteeing him his right. Thus when the partition was unfortunately made between the sons of Charlemagne, the Empire went to the eldest; and the younger son, who received the Kingdom of France, gave precedence to the elder all the more easily, as there still persisted at that time a memory of the supremacy of the true Roman Empire. Succeeding French Kings followed the rule thus established, and the other European Kings imitated them, so that the imperial crown is recognized as holding the first rank in Christendom. The majority of the other crowned heads are not in agreement on the question of rank.

Certain persons have tried to find in the Emperor's precedence something more than the first place among equals, and to attribute to him a superiority over all kings; in a word, to make him the temporal head of Christendom.(*a*) And it seems in fact, that several emperors have been minded to make like claims, as if, in reviving the name of the Roman Empire, they could also revive its rights. The other States have been on their guard against such pretensions. Mezeray(*b*) shows us the precautions taken by Charles V when the Emperor Charles IV came to France, "for fear," says the historian, "lest the courtesy shown to the Emperor, and to his son the King of the Romans, might be made the basis of a right of superiority." Bodin(*c*) relates that the French took great offense because the Emperor Sigismund "sat in the royal seat in full Parliament, and knighted the Sénéchal de Beaucaire," adding that "to repair the grievous mistake of permitting it," they were unwilling to permit the same Emperor, when at Lyons, to make the Comte de Savoie a duke. In these days a King of France would doubtless think himself demeaned if he gave the slightest sign which might be taken as an indication of any authority held by another State over his Kingdom.

§ 41. The title and honors given by a nation to its ruler.

A Nation, having the right to confer upon its ruler the degree of authority and the rights which it thinks proper, is no less free with respect to the name, titles, and honors which it may choose to bestow upon him. But if it be wise, and look to the interests of its reputation, it will not depart too far from the general practice of civilized Nations in this respect. Moreover, prudence will lead a Nation to proportion the title and the honors of its ruler to the degree of power and authority which it wishes to confer upon him. It is true that titles and honors decide nothing; they are but empty names and idle ceremonies when they are not appropriate. But who can deny their influence upon men's minds? This is what makes them of more consequence than they would appear to be at first glance. A Nation should take care not to demean itself in the eyes of other Nations or to degrade its ruler by too humble a title; but it should be even more on its guard not to encourage pride by an empty name and immoderate honors, or to put it into his mind to seek to obtain a corresponding power, either by usurpation at home or conquest abroad. On the other hand, an exalted title may animate the ruler to maintain with greater firmness the dignity of the Nation. Circumstances will determine what it is prudent to do, and in every case due bounds should be observed. "The fact that it was a Kingdom," says a reputable author who can be believed on this subject, "delivered the House of Brandenburg from the yoke of servitude under which

---

(*a*) Bartolus goes so far as to say, "that those who do not believe that the Emperor is lord of the whole world, are heretics." (See Bodin, *De la République*, Liv. I, chap. IX, p. m. 139.)

(*b*) Histoire de France; explanation of the medals of Charles V.

(*c*) *De la République*, p. 138.

Austria at that time held all the German princes." It was an ambition which Frederic III put up before his successors, as if he said to them: "I have won a title for you; do you act up to it; I have laid the foundations of your greatness; it is for you to complete the edifice."(*a*)

§ 42. Whether a sovereign may assume what title and honors he pleases.

If the ruler of a State is possessed of sovereign power he has in his hands the rights and the authority of the body politic, and he may therefore determine for himself his title and the honors which must be shown him, unless they are prescribed in the fundamental law, or unless the limitations put upon his power are a clear check upon the position he seeks to assume. His subjects owe him obedience in this case, as in all others where he acts within his lawful authority. Thus the Czar Peter I, basing his claim upon the vast extent of his States, took for himself the title of Emperor.

§ 43. Rights of other nations in this respect.

But foreign Nations are not obliged to defer to the wishes of a sovereign who assumes a new title, or of a Nation which gives what title it pleases to its ruler.

§ 44. Their duty.

However, if the title is not an unreasonable one, nor opposed to accepted custom, it is perfectly in keeping with the mutual duties which exist between Nations to give to the sovereign of a State or to a ruler of whatever character the same title which his people apply to him. But if this title be contrary to custom, if it indicate a position which the bearer does not hold, foreign Nations may refuse to accord it to him without his having any ground of complaint. The title of "Majesty" is consecrated by custom to the monarchs of great Nations. The Emperors of Germany for a long time claimed it for themselves, as belonging solely to the imperial crown. But the Kings claimed with good reason that there was no position on earth more eminent or more venerable than their own, and they refused the title to him who had refused it to them;(*b*) and to-day, with only a few exceptions founded on special reasons, the title of Majesty is peculiar to Kings.

As it would be ridiculous for a petty prince to assume the title of King and have himself addressed as "His Majesty," foreign Nations, in refusing to recognize him as such, would only be acting conformably to reason and their duty. However, if in other lands a sovereign should be in the habit of receiving from his neighbors the title of King, in spite of the small extent of his power, distant Nations desiring to trade with him may not refuse him the title. It is not for them to reform the customs of remote countries.

§ 45. How a sovereign may assure himself of titles and honors.

A sovereign who wishes to receive regularly certain titles and honors from other powers should secure them by treaty. Those who make agreements of this character are thereafter bound by them, and they may not act contrary to the treaty without doing an injury. Thus, in the cases we have just related, the Czar and the King of Prussia took care to negotiate in advance with friendly powers to secure their recognition under the new titles they wished to assume.

In former times it was the claim of Popes that it belonged to the tiara to create new crowns, and they relied upon the superstition of princes and peoples in their assertion of so sublime a right. But the claim ceased to be recognized at the period of the Renaissance, as phantoms disappear before the rising sun.(*c*) The Emperors

---

(*a*) Mémoires pour servir à l'Histoire de Brandebourg.

(*b*) At the time of the famous Treaty of Westphalia, the plenipotentiaries of France agreed with those of the Emperor, "that when the King and Queen wrote to the Emperor in their own hand and gave him the title of Majesty, he should answer in his own hand and give them the same title." (Letter of the plenipotentiaries to M. de Brienne, Oct. 15, 1646.)

(*c*) Catholic princes still receive from the Pope titles that relate to religion. Benedict XIV has given the title of "Most Faithful" to the King of Portugal, and as a point of courtesy no objection has been made to the imperative style in which the bull is worded. It is dated Dec. 23, 1748.

of Germany, who have made a similar claim, had at least before them the example of the ancient Romans; had they the same power they would have the same right.

§ 46. General custom should be followed.

In default of treaties, the generally received custom should be followed in the matter of titles and marks of honor in general. To seek to depart from it, when there is no special reason for not showing a Nation or sovereign the customary honors, would be a mark of contempt or of ill-will and contrary both to good policy and to the duties of one Nation to another.

§ 47. Mutual respect which sovereigns owe to one another.

The greatest monarch ought to respect in every ruler the sovereign character with which he is invested. The independence and equality of Nations and the mutual duties of humanity are reasons for showing even to the ruler of a petty State the respect due to the office he holds. The weakest State, no less than the most powerful, is made up of men who, whether few or many in number, are equally the object of our respect.

But this precept of the natural law does not extend further than the respect which is due from one independent Nation to another; in a word, that respect which acknowledges a State or its ruler as truly sovereign and independent, and deserving therefore of all that is due to that character. On the other hand, since a great monarch has, as we have already remarked, a very important position in human society, it is but natural that, in all that is a mere matter of form and affects in no way the essential equality of Nations, certain honors be shown him to which a petty prince could not pretend; and the latter may not refuse to the monarch such deference as does not compromise his sovereignty and independence.

§ 48. How a sovereign should maintain his dignity.

Nations and sovereigns should uphold their dignity by insisting that due honor be shown them, and above all by not permitting any offense against their honor. Hence, if certain titles and marks of respect belong to them by long custom, they may insist upon them, and they should do so whenever a case arises where national honor is involved.

But a careful distinction must be drawn between neglect, or the failure to do what received custom calls for, and positive acts of disrespect, or insults. Mere neglect may be a subject of complaint, and, if no apology be made, may be regarded as a mark of ill-will; whereas a Nation may demand, even by force of arms, the redress of an insult. The Czar Peter I, in his manifesto against Sweden, complained that no salute had been fired when he passed at Riga. He had reason to think it strange that this mark of respect had not been shown him, and he might complain of the omission; but to go to war about it would show a strange readiness to shed blood.

CHAPTER IV.

The Right of Self-Protection and the Effects of the Sovereignty and Independence of Nations.

§ 49. Right of self-protection. The duty which nature has imposed upon Nations, as upon individuals, of self-preservation, and of perfecting themselves and the circumstances by which they are surrounded, would be to no effect if they had not at the same time the right to prevent any interference with its fulfillment. A *right* is nothing else than the *moral power to act*, that is to say, the power to do what is morally possible, what is good in itself and conformable to duty. We have, therefore, the general right to do whatever is necessary to the fulfillment of our duties. Hence Nations, as men, have the right to resist any attack upon their existence, or upon the internal or external advantages they enjoy; that is to say, to protect themselves against all injury (§ 18); and this right is absolute, since it is given for the fulfillment of a natural and indispensable obligation. When force can not be used to cause a right to be respected, the possibility of exercising it effectively is very doubtful. It is this right of securing oneself against all injury which is called the *right of self-protection.*

§ 50. It gives the right of resistance. The safest plan is to prevent evil, where that is possible. A Nation has the right to resist the injury another seeks to inflict upon it, and to use force and every other just means of resistance against the aggressor. It may even anticipate the other's design, being careful, however, not to act upon vague and doubtful suspicions, lest it should run the risk of becoming itself the aggressor.

§ 51. And of obtaining redress. When the injury has been done the same right of self-protection authorizes the injured party to seek full redress and to use force to obtain it, if necessary.

§ 52. And of punishing. Finally, the injured party has the right to provide for its security in the future and to punish the offender in such a way as to prevent a recurrence of such attacks and give a warning to any others who may be tempted to make similar attacks. It may even, if circumstances should require the step, disable the aggressor from doing further harm. A Nation is acting within its right in taking such measures if they are called for; and the Nation which brings them upon itself has only its own injustice to blame.

§ 53. Right of all nations against a wrong-doer. If, then, there should be found a restless and unprincipled Nation, ever ready to do harm to others, to thwart their purposes, and to stir up civil strife among their citizens, there is no doubt that all the others would have the right to unite together to subdue such a Nation, to discipline it, and even to disable it from doing further harm. Such would be the proper action to take against the policy which Machiavelli praises in Cæsar Borgia. The designs of Philip II of Spain were such as to make all Europe unite against him, and Henry the Great with good reason formed the plan of breaking down a power whose strength was so great and whose policy so destructive.

The principles involved in the three preceding propositions constitute the several grounds upon which a just war may be waged, as we shall show in that connection.

§ 54. No nation has a right to interfere in the government of another.

It clearly follows from the liberty and independence of Nations that each has the right to govern itself as it thinks proper, and that no one of them has the least right to interfere in the government of another. Of all the rights possessed by a Nation that of sovereignty is doubtless the most important, and the one which others should most carefully respect if they are desirous not to give cause for offense.

§ 55. A sovereign may not make himself judge of the conduct of another.

The sovereign is the person to whom the Nation has confided the supreme power and the duty of governing; it has invested him with its rights, and it alone is directly concerned with the manner in which its appointed ruler makes use of his power. No foreign State may inquire into the manner in which a sovereign rules, nor set itself up as judge of his conduct, nor force him to make any change in his administration. If he burdens his subjects with taxes or treats them with severity it is for the Nation to take action; no foreign State is called on to amend his conduct and to force him to follow a wiser and juster course. Prudence will suggest the times when it may interfere to the extent of making friendly representations. The Spaniards acted contrary to all rules when they set themselves up as judges of Inca Atahualpa. If that Prince had violated the Law of Nations in their regard they would have been right in punishing him. But they accused him of having put to death certain of his own subjects, of having had several wives, etc., things for which he was not responsible to them; and, as the crowning point of their injustice, they condemned him by the laws of Spain.(*a*)

§ 56. When it is permitted to interfere in a contest between a sovereign and his people.

But if a prince, by violating the fundamental laws, gives his subjects a lawful cause for resisting him; if, by his insupportable tyranny, he brings on a national revolt against him, any foreign power may rightfully give assistance to an oppressed people who ask for its aid. The English justly complained of James II. The nobility and the patriotic leaders resolved to put a check upon his policy, which clearly tended to overthrow the Constitution and to destroy the liberties and the religion of the people, and they obtained the help of the United Provinces. Doubtless the authority of the Prince of Orange had an influence in the deliberations of the States-General, but it did not lead them to do an act of injustice. To give help to a brave people who are defending their liberties against an oppressor by force of arms is only the part of justice and generosity. Hence, whenever such dissension reaches the state of civil war, foreign Nations may assist that one of the two parties which seems to have justice on its side. But to assist a detestable tyrant, or to come out in favor of an unjust and rebellious people, would certainly be a violation of duty. When, however, the political bonds between a sovereign and his people are broken, or at least suspended, they may be considered as two distinct parties, and since both are independent of all foreign authority, no one has the right to judge them. Either may be in the right, and those who assist the one or the other may think they are upholding the just cause. Hence, by virtue of the voluntary Law of Nations (see Introd., § 21), the two parties must be allowed to act as if possessed of equal right, and to be treated accordingly, until the affair is decided.

But this principle should not be made use of so as to authorize criminal designs against the peace of Nations. It is in violation of the Law of Nations to call on subjects to revolt when they are actually obeying their sovereign, although complaining of his rule.

The practice of Nations is in conformity with the principles laid down. When the German Protestants came to the help of the reformed party in France the

---

(*a*) Garcillasso de la Véga.

Court did not attempt to treat them on any other footing than that of belligerents, to whom the laws of war were to be applied. France was at that time giving help to the Netherlands in their revolt against Spain, and expected that its troops should be regarded in the same class as auxiliaries, engaged in regular warfare. But no power would fail to regard other than as a grievous injury any attempt of a foreign Nation, by means of agents, to stir up its subjects to revolt.

As for those monsters who, under the name of sovereigns, act as a scourge and plague of the human race, they are nothing more than wild beasts, of whom every man of courage may justly purge the earth. Hercules was universally praised by the ancients for freeing the world of such monsters as Antæus, Busiris, and Diomedes.

§ 57. Right to resist the interference of foreign powers in the government of a nation.

Having shown that foreign Nations have no right to interfere in the government of an independent State, it is not difficult to prove that the latter is justified in resisting such interference. To govern itself after its own good pleasure is the adjunct of its independence. A sovereign State may not be constrained in this respect, except with reference to certain specific rights which others may have acquired by treaty, and which, since a Nation is naturally jealous of interference in its government, can not be extended beyond the clear and express terms of the treaty. Apart from the above case a sovereign has the right to treat as enemies those who undertake to interfere in its domestic affairs otherwise than by their good offices.

§ 58. The same right with respect to interference in religion.

Religion is, in all its bearings, a matter of great concern to a Nation, and it is one of the most important subjects which can occupy the government. An independent Nation need give account of its religious belief to God alone; it has the right to act, in this matter as in every other, according to its own conscience, and to resist the interference of any outsider in so personal a matter. The custom long kept up in Christendom of deciding and regulating all matters connected with religion in a General Council could only have arisen from the peculiar circumstance that the whole Church was subject to the same civil government—the Roman Empire. When the Empire fell its place was taken by several independent Kingdoms, with the result that the custom of General Councils was found to be contrary to the first principles of government, to the very idea of a State or political body. However, it was for a long time kept up out of prejudice, ignorance, and superstition, and because of the authority of the Popes and the power of the clergy, so that it was still respected at the time of the Reformation. The States which had embraced the Reformation offered to submit to the decision of an impartial council lawfully convened. In these days they would be bold enough to declare plainly that they are subject to no power on earth in the matter of religion, no more than in that of civil government. The general and absolute authority of Pope and Council is absurd in any other system than that of those Popes who sought to unite all Christendom in one single body, of which they asserted that they were the supreme rulers.(*a*) Even Catholic sovereigns have sought to restrict that authority within limits consistent with their supreme power; they do not receive the decrees of Councils and the Papal bulls until they have had them examined, and ecclesiastical laws have no force in their States, except with the consent of the Prince. We have given sufficient proof in Book I, Chap. XII, of the rights of the State on the subject of religion, and we only revert to them here in order to draw from them just conclusions as to the proper conduct of Nations towards one another.

(*a*) See above, § 146, and Bodin, *De la République,* Liv. I, ch. IX, with his quotations.

§ 59. No nation may be constrained on the subject of religion.

It is therefore certain that no one may interfere, against a Nation's will, in its religious affairs, without violating its rights and doing it an injury. Much less is it permitted to have recourse to armed force, to compel a Nation to receive a certain form of religious belief or worship which it is believed is of divine origin. By what right do men set themselves up as defenders or protectors of the cause of God? He is able at all times, when it shall please Him to do so, to lead Nations to the knowledge of Himself by more effective means than the use of force. Persecution never results in sincere conversions. The horrible idea of spreading religion by the sword is subversive of the Law of Nations and the most terrible scourge of peoples. Every fanatic will believe himself fighting in the cause of God, and every ambitious ruler will justify his conquests on that ground. While Charlemagne was ravaging Saxony with fire and sword, in order to establish Christianity there, the successors of Mahomet were devastating Asia and Africa in order to set up the Koran.

§ 60. Offices of humanity in this matter. Missionaries.

But it is an office of humanity to endeavor, by lawful and gentle means, to persuade a Nation to receive a form of religion which it is believed is the only true and proper one. Missionaries may be sent to instruct the Nation, and the act is entirely in keeping with the interest which every Nation should have in the advancement and happiness of other Nations. But in order not to act in contempt of the rights of the sovereign, missionaries should refrain from preaching, secretly and without his permission, a new doctrine to his subjects. He may refuse their services, and if he orders them away they must obey him. An express command from the King of Kings is needed to justify one in disobeying a sovereign who is acting within the scope of his authority; and the sovereign who is not convinced that the missionary has received a special call from God is warranted in punishing his disobedience. But suppose that the Nation, or a considerable part of the people, desire to retain the missionary and to follow his teachings. We have elsewhere set forth the rights of the Nation and those of the citizens (Book I, §§ 128–136), and the answer to this question can be found there.

§ 61. Circumspection which must be used.

The subject is attended with many difficulties, and we can not authorize an imprudent zeal for making converts without endangering the peace of all Nations and placing the missionaries in the position of aggressors at the very time when they think they are performing a meritorious work; for after all it is certainly an uncharitable act, and indeed a vital injury to a Nation, to spread a false and dangerous doctrine among its citizens. Now, there is no Nation which does not think that its own form of religion is the only true and proper one. Animate and inflame all hearts with the ardent zeal of missionaries and you will see Europe crowded with lamas, bonzes, and dervishes, while monks of every kind will overrun Asia and Africa. Protestant ministers will brave the Inquisition in Spain and Italy, while the Jesuits will go among Protestants in order to bring them back within the pale of the Church. Let Catholics reproach Protestants as much as they like with lukewarmness, the attitude of the latter is certainly more in accord with the Law of Nations and with reason. True zeal will apply itself to make a holy religion flourish in the countries where it is received and to render it helpful to the moral life of the citizens; and while awaiting the dispositions of Providence, either in the form of an invitation from foreign Nations or of a clearly divine mission to preach abroad, it will find enough to do at home. Finally, let us add that to authorize one in undertaking to preach a given form of religion, one must first of all have convinced oneself of its truth after the most serious examination. What, are Christians to doubt the truth of their religion! Very well, a Mohammedan no more doubts the truth of his. Be ever ready to share your knowledge; set forth simply and sincerely the principles of your belief to those who desire to hear you; instruct them, and persuade them by an appeal to reason; but do not seek to win them over by the ardor of enthusiasm. It is enough for each of us to have to answer for his own conscience; no one will be refused the light, and the peace of Nations will not be disturbed by an obtrusive zeal.

§ 62. What a sovereign may do for his co-religionists in another state.

When a form of religion is being oppressed in any country, foreign Nations professing that form may intercede for their brethren; but that is the extent to which they can lawfully go, unless the persecution is carried to an intolerable degree, when it becomes a case of evident tyranny, against which all Nations may give help to an unfortunate people (§ 56). Moreover, in the interests of their own welfare they may be justified in defending the oppressed. A King of France answered to the ambassadors who begged him to let his Protestant subjects live in peace that he was master in his Kingdom. But the Protestant sovereigns, who saw a general conspiracy of Catholics bent upon their ruin, had on their part a right to give assistance to persons who might strengthen their party and help them to avert the ruin with which they were threatened. National lines all break down when there is question of uniting against fanatics who seek to destroy all who do not unhestitatingly receive their doctrines.

CHAPTER V.

The Observance of Justice Between Nations.

§ 63. Necessity of the observance of justice in human society.

Justice is the foundation of all social life and the secure bond of all civil intercourse. Human society, instead of being an interchange of friendly assistance, would be no more than a vast system of robbery if no respect were shown for the virtue which gives to each his own. Its observance is even more necessary between Nations than between individuals, because injustice between Nations may be followed by the terrible consequences involved in an affray between powerful political bodies, and because it is more difficult to obtain redress. It is easy to prove from the natural law that all men are under the obligation to be just. We presume here that the obligation is sufficiently understood, and we limit ourselves to the observation that not only are Nations not exempt from it (Introd., § 5), but it is even more sacred with respect to them because of the importance of its effects.

§ 64. Obligation upon all nations to promote and observe justice.

Hence there is a strict obligation upon all Nations to promote justice among themselves, to observe it scrupulously in their own conduct, and to refrain carefully from any violation of it. Each should render to the others what belongs to them, respect their rights, and leave them in the peaceful enjoyment of them.

§ 65. Right to resist injustice.

It follows from this indispensable obligation which nature imposes upon Nations as well as from the obligations under which each Nation lies towards itself, that every State has the right to resist any attempt to deprive it of its rights, or of anything which lawfully belongs to it; for in so doing it is only acting in conformity with all its duties, which is the source of its right. (§ 49)

§ 66. This right is a perfect one.

This right is a perfect one; that is, it carries with it the right to use force to make it effective. To what purpose would be the right given us by nature to withstand injustice, and the obligation upon others to do us justice if we could not lawfully constrain them when they refuse to fulfill that duty? The just man would be at the mercy of avaricious and dishonest people, and all his rights would soon be worthless.

§ 67. It gives (1) The right of self defense.

From this right there arise, as so many branches, first, the right of lawful self-defense which belongs to every Nation, or the right of resisting by force any attack upon itself or its rights. This is the justification of defensive war.

§ 68. (2) And that of obtaining justice by force.

Secondly, the right to use force to obtain justice, if it can not otherwise be had, or to follow up one's rights by force of arms. This is the justification of offensive war.

§ 69. Right to punish an unjust nation.

An intentional act of injustice is certainly an *injury*. A Nation has, therefore, the right to punish it, as we pointed out above when speaking of injuries in general (§ 52). The right to resist injustice is derived from the right of self-protection.

§ 70. Right of all nations against one which openly contemns justice.

Let us apply, moreover, to unjust Nations what we said above (§ 53) with respect to a wrong-doer. If a Nation were to make open profession of treading justice under foot by despising and violating the rights of another whenever it had an opportunity of doing so, the safety of the human society at large would warrant all the other Nations in uniting together to subdue and punish such a Nation. We are not overlooking the principle laid down in the Introduction that it does not belong to Nations to set themselves up as judges over one another. In individual cases, where there is any room at all for doubt, it should be presumed that each of the parties may have some justice on its side; it is possible that the injustice of the one in the wrong may be the result of mistake and not of deliberate contempt for justice. But if a Nation, by its accepted principles and uniform policy, shows clearly that it is in that malicious state of mind in which no right is sacred to it, the safety of the human race requires that it be put down. To set up and maintain an unjust claim is an injury merely to the one who is affected by the claim; but to manifest a general contempt for justice is a wrong to all Nations.

CHAPTER VI.

The Share a Nation May Have in the Acts of its Citizens.

§ 71. The sovereign should avenge injuries done to the state, and protect the citizens.

In the preceding chapters we have seen what are the mutual duties of Nations towards one another, how they should respect one another, and refrain from doing injury or showing any offense to one another, and how justice and fairness should characterize their conduct. But thus far we have only considered the acts of the Nation or State as a whole and those of the sovereign. The individual members of a Nation may give offense to and ill-treat the citizens of another State or do an injury to a foreign sovereign, so that we have yet to investigate what share a Nation may have in the acts of its citizens, what are the rights and obligations of sovereigns in this respect.

Whoever wrongs the State, violates its rights, disturbs its peace, or injures it in any manner whatever becomes its declared enemy and is in a position to be justly punished. Whoever ill-treats a citizen indirectly injures the State, which must protect that citizen. The sovereign of the injured citizen must avenge the deed and, if possible, force the aggressor to give full satisfaction or punish him, since otherwise the citizen will not obtain the chief end of civil society, which is protection.

§ 72. He should not permit his subjects to offend other nations or their subjects.

But, on the other hand, the Nation, or the sovereign, must not allow its citizens to injure the subjects of another State, much less to offend that State itself; and this not only because no sovereign should permit those under his rule to violate the precepts of the natural law, which forbids such acts, but also because Nations should mutually respect one another and avoid any offense, injury, or wrong; in a word, anything which might be hurtful to others. If a sovereign who has the power to see that his subjects act in a just and peaceable manner permits them to injure a foreign Nation, either the State itself or its citizens, he does no less a wrong to that Nation than if he injured it himself. Finally, the very safety of the State and of society at large demands this care on the part of every sovereign. If a Nation allows its subjects full freedom to act as they please towards foreign Nations, the latter will act in like manner towards it; and in place of the friendly intercourse which nature intends should exist among men we shall have nothing better than a dreadful state of international anarchy.

§ 73. The acts of its citizens are not to be charged to the nation.

However, it is impossible for the best governed State or for the most watchful and strict sovereign to regulate at will all the acts of their subjects and to hold them on every occasion to the most exact obedience; it would be unjust to impute to the Nation, or to the sovereign, all the faults of their citizens. Hence it can not be asserted in general that one has been injured by a Nation because one has been injured by one of its citizens.

§ 74. Unless it approve or ratify them.

But if the Nation, or its ruler, approve and ratify the act of the citizen, it takes upon itself the act, and may then be regarded by the injured party as the real author of the affront of which the citizen was perhaps only the instrument.

§ 75. Steps to be taken by the injured state.

If the injured State has hold of the offender it may without hesitation inflict just punishment upon him. If the offender has escaped and returned to his own country, justice should be demanded of his sovereign.

§ 76. Duty of the sovereign of the offender.

And since the sovereign should not permit his subjects to trouble or injure the subjects of another State, much less to be so bold as to offend a foreign Power, he should force the offender to repair the evil, if that can be done, or punish him as an example to others, or finally, according to the nature and circumstances of the case, deliver him up to the injured State, so that it may inflict due punishment upon him. This is the practice generally observed with respect to serious crimes which violate the laws and menace the safety of all Nations alike. Assassins, incendiaries, and robbers are seized wherever they are found, and delivered up, on request, to the sovereign in whose territory the crime has been committed. In States which are on more intimate terms of friendship and comity, the matter is carried further still; even in the case of ordinary misdemeanors which are subject to civil prosecution, and for which damages may be exacted or a light civil punishment inflicted, the subjects of two neighboring States are mutually obliged to appear before the magistrate of the district in which they are accused of having done the wrong. Upon the requisition of that magistrate by a rogatory letter, they are summoned by their own magistrate and forced to appear before the other. The practice is an excellent one, for it enables neighboring States to live together in peace, so that they seem to form but one Republic. It is in force throughout all Switzerland. As soon as the rogatory letters are properly issued, the sovereign of the accused must give effect to them. It is not for him to investigate whether the accusation is true or false; he must presume on the justice of his neighbor and not destroy by his distrust a practice so well adapted to preserve friendly relations. However, if he should find from constant experience that his subjects are being persecuted by the magistrates of the neighboring States when appearing before them, he would doubtless be justified in considering the protection due to his people and in refusing the requisitions until satisfaction had been made for the injustice done and its recurrence provided against. But he would have to set forth his reasons for taking such action and make them perfectly plain.

§ 77. If he refuses justice, he becomes a party to the deed.

A sovereign who refuses to repair the evil done by one of his subjects, or to punish the criminal, or, finally, to deliver him up, makes himself in a way an accessory to the deed, and becomes responsible for it. But if he delivers up either the property of the criminal, by way of indemnification when the case admits of it, or the criminal himself to undergo the punishment of his crime, the injured party has nothing further to demand. King Demetrius delivered up to the Romans the persons who had killed their ambassador; but the Senate sent them back, because it wished to reserve the punishment of the crime to a time when it could vindicate it upon the King himself or upon his territory.(*a*) If the actual fact was that the King had no part in the murder of the Roman ambassador, the action of the Senate was wholly unjust and worthy of persons who seek a pretext for their ambitious designs.

§ 78. Another case in which a nation is held responsible for the acts of its citizens.

Finally, there is another case in which a Nation as a whole is responsible for the crimes of its citizens. This is when by its practices and by the principles of its government it accustoms and permits its citizens to rob and ill-treat foreigners at will, to make inroads into neighboring territory, etc. Thus the Usbecks as a Nation are guilty of all the robberies perpetrated by their members. The sovereigns whose subjects are robbed and murdered, and whose dominions are infested by these brigands, may justly lay the blame upon the whole Nation. Nay, more; all Nations may unite to repress such a Nation as the common enemy of the human race. Christian Nations would have an equal right to unite against the Barbary States to destroy the haunts of those pirates to whom the love of pillage and the fear of just chastisement are the only rules of peace and war. But the corsairs are prudent enough not to trouble those who are in a position to punish their attacks; and the Nations which are able to keep the routes of a rich commerce open to themselves are not sorry to see them closed to other Nations.

(*a*) See Polybius, quoted by Barbeyrac in his notes on Grotius, Book III, chap. XXIV, § VII.

CHAPTER VII.

The Effects of Territorial Domain as Between Nations.

§ 79. General effect of territorial domain.

We have set forth in Chapter XVIII, Book I, the manner in which a Nation takes possession of a country and obtains the ownership and sovereignty of it. This territory, with all that is included in it, becomes the property of the Nation at large. Let us see what are the effects of these property rights with respect to other Nations. Full ownership is necessarily a peculiar and exclusive right; for, from the very fact that I have full right to dispose of a thing at will, it follows that others can not have any rights at all to it; if they had, I could not dispose freely of the thing in question. The private ownership of individual citizens may be limited and restricted in various respects by the laws of the State, and it is always subject to the eminent domain of the sovereign; but the public ownership possessed by the Nation is full and absolute, since there is no authority on earth which can impose limitations upon it; hence it excludes any right on the part of outsiders; and as the rights of a Nation should be respected by all other Nations (§ 64), no Nation may put forth any claim over the territory belonging to another Nation, nor dispose of it, no more than of anything included in it, without the latter's consent.

§ 80. What is included in the domain of a nation.

The territorial domain of a Nation extends to whatever it possesses by a just title; it embraces its ancient and original possessions and all of its acquisitions made by means either actually just or accepted as such among Nations; likewise grants, purchases, conquests made in regular war, etc.; and among its possessions must be counted not only its lands, but all the rights which it enjoys.

§ 81. The property of the citizens is the property of the nation with respect to foreign nations.

Even the property of individuals, taken as a whole, is to be regarded as the property of the Nation with respect to other Nations. In a sense it really belongs to the Nation, because of the rights which the Nation has over it and because it constitutes part of the sum total of national wealth and power. The duty a Nation has of protecting its members gives it certain rights over their property. Finally, the fact that Nations act as a unit, and treat with one another in their character of political societies, and are regarded as so many corporate persons, necessitates these national rights over the property of the citizens. Since all the members of a society or Nation are regarded by foreign Nations as constituting one single personality, their property, taken as a whole, can only be recognized as belonging to that same personality. This is so true that each political society may, if it so pleases, set up within its borders a community of ownership, as Campanella did in his Republic of the Sun. Other Nations may not inquire as to what it does in this respect, its domestic adjustments do not affect its rights towards foreigners nor their attitude towards its national property as a whole, however it be possessed by the citizens.

§ 82. Deduction from this principle.

It follows directly from this principle that if a Nation has a right to any part of the property of another Nation it has an indiscriminate right to the property of the citizens of that Nation to the amount of the debt. This rule is of wide application, as we shall see later.

§ 83. Connection of national ownership with sovereignty.

The general ownership of a Nation over the lands it inhabits naturally carries with it the sovereignty over them, for in settling in an unoccupied territory the Nation has surely no intention of holding that territory subject to another power; and how could an independent Nation be otherwise than sovereign in its own territory? Moreover we have already remarked (Book I, § 205) that in taking possession of a country a Nation is presumed to bring it at the same time under its sovereignty. We shall go further here, and show the natural connection of these two rights in the case of an independent Nation. How could it govern itself after its own policy if the lands it inhabits were not fully and absolutely at its disposal? And how could it have this full and absolute ownership of them if it had not at the same time sovereignty over them? The sovereignty of another, and the rights which go with it, would prevent a free disposal of the territory. Consider, moreover, the eminent domain which is a part of sovereignty (Book I, § 244), and it will be seen how intimate is the connection between national ownership and sovereignty. Likewise what is called the *supreme ownership*, which is nothing else than the ownership of the body of the Nation or of the sovereign who represents it, is regarded by all as inseparable from sovereignty. The *ownership to use*, or ownership limited to the rights which can belong to an individual in the State, is separable from sovereignty; and there is nothing to prevent it from belonging to a Nation in lands which are not subject to its sovereignty. Thus several sovereigns have fiefs and other possessions in the territory of another prince; in such cases they hold them after the manner of private individuals.

§ 84. Jurisdiction.

Sovereignty following upon ownership gives a Nation *jurisdiction* over the territory which belongs to it. It is the part of the Nation, or of its sovereign, to enforce justice throughout the territory subject to it, to take cognizance of crimes committed therein, and of the differences arising between the citizens.

Other Nations must respect this right; and as the administration of justice necessarily requires that every sentence, pronounced in due form and by the court of last resort, be regarded as just and executed as such, when once a case in which foreigners are involved has been decided in due form, the sovereign of the litigants may not review the decision. To undertake to inquire into the justice of a definitive sentence is an attack upon the jurisdiction of the court which passed it. Hence a sovereign should not interfere in the suits of his subjects in foreign countries nor grant them his protection, except in cases where justice has been denied or the decision is clearly and palpably unjust, or the proper procedure has not been observed, or finally, in cases where his subjects, or foreigners in general, have been discriminated against. The British court set forth this principle very clearly when, during the recent war, certain Prussian vessels were seized and declared lawful prize.(*a*) The principle may be accepted without any reference to the merits of the particular case which turned on the facts involved.

§ 85. Extraterritorial effects of jurisdiction.

In consequence of these rights of jurisdiction the decisions rendered by the judge of the place where the parties are domiciled, when made within the scope of his authority, should be recognized and put into effect even in foreign countries. For example, it belongs to the local judge to appoint guardians and trustees for minors and idiots. The Law of Nations, which has in view the common welfare and friendly intercourse of Nations, demands, therefore, that this appointment of guardian or trustee be recognized as effective in all countries where the ward may have business relations. This rule was applied in the year 1672 even with respect to a sovereign. When the Abbé d'Orleans, sovereign Prince of Neufchatel, in Switzerland, became unable to manage his own affairs, the King of France appointed as his guardian his mother, the Dowager Duchess de Longueville. The Duchess de Nemours, sister of the Abbé, laid claim to the guardianship for the Principality

---

(*a*) See the report made to the King of Great Britain by Lord Lee, Dr. Paul, Lord Ryder, and Mr. Murray. It is an excellent monograph on the Law of Nations.

of Neufchatel, but the title of the Duchess de Longueville was recognized by the three estates of the country. Her counsel based her claim upon the fact that she had been appointed guardian by the local judge.(*a*) It was a very improper application of a perfectly sound principle; for the domicile of the Prince could only be in his State. It was only the decree of the three estates, to whom alone it belonged, to appoint a guardian for their sovereign, which legalized and secured the title of the Duchess de Longueville.

In like manner the validity of a will, as to its form, can only be passed upon by the judge of the place where the testator had his domicile, and the decision, if in proper form, should be recognized everywhere. But while the validity of the will as such may not be questioned, the bequests and devises contained in it may be contested before the judge of the place where the property is situated, since the property can only be disposed of in accordance with laws of the country. Thus when the Abbé d'Orleans, whom we referred to above, appointed the Prince de Conti as his sole legatee, the three estates of Neufchatel gave the investiture of the Principality to the Duchess de Nemours, without waiting until the Parliament of Paris should pass upon the two conflicting wills of the Abbé d'Orleans, and asserted that the sovereignty was inalienable. Moreover, it might have been said on that occasion that the domicile of the Prince could not be elsewhere than in his State.

§ 86. Uninhabited and uncultivated places.

Whatever is included in its territory belongs to a Nation, and no one else may dispose of such property unless the Nation has transferred its rights (§ 79); if it has left certain districts wild and untilled, they may not be taken possession of at will without its permission. Although it may not be making actual use of them, these districts belong to it, and it has an interest in keeping them for future use; also it need render account to no one of the manner in which it employs its property. Nevertheless, we must recall here a remark which we made above (Book I, § 81): no Nation may lawfully appropriate an extent of territory entirely disproportionate to its needs, and thus restrict the opportunity of settlement and sustenance for other Nations. A German chieftain of the time of Nero said to the Romans: "As the heavens belong to the gods, so the earth is given to the human race, and lands that are unoccupied are common to all";(*b*) giving those proud conquerors to understand that they had no right to assert a claim to territories which they left unoccupied. The Romans had laid waste a line of territory along the Rhine to protect their provinces against the inroads of the barbarians. The remonstrance of the German chieftain would have been well-founded if the Romans had had no purpose in laying claim to a vast area, otherwise useless to them. But this tract, which they wished to remain uninhabited, served as a rampart against fierce tribes, and as such was of great service to the Empire.

§ 87. Duty of a nation with regard to them.

Apart from such peculiar conditions, it is equally in keeping with the duties of humanity and with the private interest of the State to open up these unoccupied lands to foreign immigrants who desire to clear them and make them productive. The generosity of the State thus turns to its profit; it acquires new subjects and adds to its wealth and power. This is what is done in America; by this wise method the English have brought their colonies in the New World to a condition where the strength of the colonies adds considerably to that of the Nation. Thus, also, the King of Prussia is endeavoring to re-people his States which had been laid waste by the disasters of former wars.

(*a*) Memorial in behalf of Madame la Duchesse de Longueville, 1672.

(*b*) *Sicut cœlum Diis, ita terras generi mortalium datas; quæque vacuæ, eas publicas esse.* (Tacitus.)

§ 88. The right to appropriate things which belong to no one.

A Nation which has unoccupied territory in its possession is free to leave certain things annexed to it, which have not yet been reduced to ownership, in their original condition as common property, or it may keep to itself the right of taking possession of them, as of every other benefit which may be obtained from those lands. This right, being one of value, is, in case of doubt, presumed to have been reserved by the Nation to itself. It therefore belongs to the Nation to the exclusion of foreigners, unless the laws provide otherwise, as did those of the Romans, which left wild beasts, fish, etc., in their original condition of common property. Consequently foreigners have no natural right to hunt or fish in the territory of a State, nor to appropriate treasures found there, etc.

§ 89. Rights granted to another nation.

There is nothing to prevent a Nation, or a sovereign, if authorized by the laws, from granting various rights in its territory to another Nation or to foreigners in general, since every one may dispose of his property as he thinks best. Thus certain sovereigns in the Indies have granted to the commercial Nations of Europe the right to have trading establishments, ports, and even fortresses and garrisons, in certain localities in their States. One may grant in like manner fishing rights in a river or along the coast, or the right of hunting in forests, etc. And when once these rights have been validly granted, they become part of the property of the grantee, and must be respected in the same manner as property he has always possessed.

§ 90. It is not lawful to drive a nation from the country which it inhabits.

Whoever agrees that robbing is a crime, and that it is not lawful to take away the property of another, will admit without further proof that no Nation has a right to drive another from the territory which it inhabits, in order itself to settle there. In spite of the great inequalities of climate and soil, each Nation should be content with what has fallen to its share. Shall sovereigns despise a rule which is the basis of their security in civil society? Let this sacred rule be forgotten and the peasant will leave his hut to invade the palace of the noble or the luxurious possessions of the rich. The ancient Helvetians, dissatisfied with their native soil, burned their dwellings and set out, sword in hand, to obtain a settlement in the fertile lands of southern Gaul. But they received a terrible lesson at the hands of a conqueror more skillful than they, and even less just; Cæsar defeated them and sent them back to their own country. Their descendants, with greater wisdom, contented themselves with keeping the territory and maintaining the independence which nature had given them; the labor of free men makes up for the sterility of the soil.

§ 91. Nor to extend by violence the boundaries of empire.

There are conquerors who seek merely to extend the boundaries of their Empire, so that instead of driving out the inhabitants from a territory, they are satisfied with reducing them to subjection—a tyranny less cruel but not more just, for while sparing the property of individuals, they are violating all the rights of the Nation and of the sovereign.

§ 92. Boundary lines must be carefully fixed.

Since the least encroachment upon the territory of another is an act of injustice, in order to avoid being guilty of it, and to remove all occasion of strife and dispute, the boundary lines of territories should be clearly and precisely determined. If the men who drew up the Treaty of Utrecht had given to this important matter the attention it deserved we would not find France and England in arms to decide by a bloody war the extent of their possessions in America. But it often happens that certain clauses in treaties are left purposely indefinite and obscure, so as to leave an opening for future aggressions—an unworthy ruse in a proceeding which should be characterized by good faith. Diplomats have also been known to endeavor to outwit or to corrupt the agents of a neighboring State in order to gain unjustly a few leagues of territory for their sovereign. How can it be that sovereigns, or their ministers, will resort to tricks which would disgrace an individual?

§ 93. Violation of territory.

Not only can the territory of another not be encroached upon, but it must be respected, and no act committed there in violation of the rights of the sovereign, for a foreign Nation can exercise no right at all over it (§ 79). Hence an armed force can not enter its territory without doing an injury to the State in order to seize a fugitive criminal and carry him off. The act would be at once an attack upon the safety of the State and a breach of the sovereign rights of the Prince. This is what is called a violation of territory, and no act is more generally recognized among Nations as an injury which must be resisted vigorously by every State that does not wish to let itself be oppressed. We shall make use of this principle in treating the subject of war, which gives rise to several questions concerning the rights of territory.

§ 94. Prohibition from entering territory.

A sovereign may prohibit entrance into his territory, either to all foreigners in general or to certain persons, or in certain cases or for certain particular purposes, according as the welfare of the State may require. There is full justification for so doing in the rights of ownership and sovereignty; every one is obliged to respect the prohibition, and those who presume to violate it incur the penalties fixed to render it effective. But the prohibition should be made known, as also the penalties attached to its violation; those who are not aware of it should be notified when they are about to enter the territory. In former times the Chinese, fearing that intercourse with foreigners would corrupt the morals of the Nation and impair the principles of a wise but peculiar government, forbade all foreigners to enter the Empire. There was nothing unjust in this prohibition, provided that the offices of humanity were not refused to those who by stress of weather or other necessity were forced to approach their frontiers. The policy was of benefit to the Nation and did not violate the rights of anyone, nor even the duties of humanity, which allow us, where rights conflict, to prefer ourselves to others.

§ 95. Territory occupied at the same time by several nations.

If two or more Nations discover and occupy at the same time an island or other unsettled and unowned land, they should agree together upon a just partition. But if they can not come to an agreement each is entitled to the sovereignty and ownership of those portions in which it was the first to settle.

§ 96. Territory occupied by an individual.

An independent individual, whether he has been exiled from his country or has left it lawfully of his own accord, may settle in a country which he finds without owner and appropriate land as his private estate. Others who later on wish to take possession of the entire country can not justly do so without respecting the rights and independence of this individual. But if he himself should find a sufficient number of men who are willing to live under his laws he can set up a new State in the territory he has discovered, and possess both the ownership and the sovereignty over it. But if this individual by himself should try to claim an exclusive right over a territory and reign there as a monarch with subjects, his unfounded claims would be justly disregarded, since a rash and ridiculous pretense of holding possession can not give rise to any real rights.

There are still other ways in which an individual can found a new State. Thus, in the eleventh century, certain Norman knights founded a new Empire in Sicily, after having conquered that country from the common enemies of Christian Nations. Norman custom permitted citizens to leave their country and seek their fortune elsewhere.

§ 97. Independent families living in a country.

When several independent families are settled in a country they have the free ownership of their individual possessions, but without the rights of sovereignty over the whole, since they do not form a political society. No one may lay claim to sovereignty over that country, for this would be to subject those families against their will, and no man has the right to rule over persons born free unless they submit voluntarily to him.

If these families have fixed settlements the area occupied by each is its private property; the rest of the country, which is not being put to use, remains in its original condition of common property and is open to the first occupant. Anyone who desires to settle there can lawfully take possession of it.

When a country is occupied by wandering families, like those of pastoral tribes, which move from place to place according to their needs, it is possessed by them in common. They hold it to the exclusion of other peoples, and they can not be justly deprived of lands of which they are making use. But let us repeat again here what we have said more than once (Book I, §§ 81, 209; Book II, § 86), namely, that the savage tribes of North America had no right to keep to themselves the whole of that vast continent; and provided sufficient land were left to the Indians, others might, without injustice to them, settle in certain parts of a region, the whole of which the Indians were unable to occupy. If the Arabian shepherds were willing to cultivate the soil carefully, a smaller area would suffice for them. Still, no other Nation has the right to restrict their possessions, unless it is in absolute need of land; for, after all, they are in possession of the country, they make use of it after their own fashion, they obtain from it what is needed for their manner of life, as to which no one may dictate to them. In a case of urgent necessity I think that persons could settle without injustice in a part of this territory and teach the Arabs the methods of cultivation by which their country could be made to support both themselves and the newcomers.

§ 98. When certain places only are settled, or certain rights claimed, in an unoccupied territory.

It may happen that a Nation will content itself to occupy certain places only, or to assert certain rights, in a country which is without owner, without caring to take possession of the whole country. Another Nation may then take up what has been thus neglected, but it can only do so on condition that all the rights which have been acquired by the first Nation be left entirely and absolutely untouched. In such cases it is well to come to an agreement by treaty, and this is the practice of almost all civilized Nations.

CHAPTER VIII.

Rules with Respect to Foreigners.

§ 99. General idea of the proper conduct of a state towards foreigners.

We have elsewhere spoken (Book I, § 213) of *residents*, or persons who are domiciled in a State of which they are not citizens. We are here speaking only of foreigners who are either passing through or temporarily remaining in a country, whether on business or as mere travelers. The relations which they sustain with the State in which they happen to be, the object of their journey and temporary residence, the duties of humanity, the rights, the welfare and safety of the State which receives them, the rights of the State to which they belong—all these considerations, taken together and applied to the circumstances of each case, serve to determine the proper conduct of a State towards them and its rights and duties with respect to them. But the purpose of this chapter is not so much to show what humanity and justice call for in our treatment of foreigners as to lay down the rules of the Law of Nations on this subject, rules whose object is to secure the rights of both parties and to prevent the peace of Nations from being disturbed by the disputes of individuals.

§ 100. Admittance into the territory.

Since the lord of the territory may forbid entrance into it, whenever he thinks proper (§ 94), he may undoubtedly fix the conditions on which admittance will be allowed. This, as we have already said, is a consequence of the right of ownership. Need we add that the owner of the territory should be mindful in his regulations of the duties of humanity? The same holds good for all rights; the possessor may use them freely if in so doing he does not injure anyone; but if he wishes to be free from blame and to keep an upright conscience he will never use them except in full conformity with his duty. We are here speaking of the general right which belongs to the lord of the country, reserving for the following chapter the consideration of the cases in which he can not refuse admittance into his territory; and we shall see in Chapter X how his duties towards all men oblige him, on other occasions, to grant the right of passage through, and temporary residence in, his States.

If a sovereign attaches some special condition to the permission to enter his territory, he must see that notice of it is given to foreigners when they present themselves at the frontier. There are States, such as China and Japan, which forbid all foreigners to enter without express permission. In Europe free access is granted to all who are not enemies of the State, though certain countries exclude vagabonds.

§ 101. Foreigners are subject to the laws.

But even in States which freely admit foreigners it is presumed that the sovereign only grants them access on the implied condition that they will be subject to the laws—I mean to the general laws established for the maintenance of good order and not operative only in the case of citizens or subjects. The public safety and the rights of the Nation and of the sovereign necessarily impose this condition, and foreigners impliedly submit to it as soon as they enter into the country, and can not presume to obtain admittance on any other footing. Sovereignty is the right to command throughout the whole country; and the laws are not limited to regulating the conduct of the citizens with one another, but they extend to all classes of persons in every part of the land.

§ 102. And to the penalties attached to their violation.

Being thus subject to the laws, foreigners who violate them should be punished accordingly. The purpose of penalties is to enforce respect for the laws and to maintain public order and safety.

§ 103. Who is to judge disputes between them.

For the same reason, any disputes which may arise between foreigners, or between a foreigner and a citizen, should be settled by the local judge and according to the local laws; and, as the dispute normally arises from the refusal of the defendant to acknowledge the justice of the claim made against him, it follows, from the same principle, that every defendant should be prosecuted before his judge, who alone has the right to pass sentence upon him and enforce performance. The Swiss have wisely incorporated this rule into their articles of alliance in order to prevent abuses in this matter, which were formerly quite frequent and a cause of dissension. The judge of the defendant is the judge of the place where the defendant has his domicile or the judge of the place where the defendant happens to be when a sudden difficulty arises, provided the question be not one relating to an estate in land or rights annexed to such an estate. In this last case, as this kind of property should be held according to the laws of the country where it is situated, and as it belongs to the ruler of the country to vest with possession, disputes relating to land can only be passed upon in the State which has control over it.

We have already shown (§ 84) how the jurisdiction of a Nation should be respected by other sovereigns and in what cases only they may intervene in the suits of their subjects in foreign countries.

§ 104. Protection due to foreigners.

A sovereign may not allow the right of entrance into his territory granted to foreigners to prove detrimental to them; in receiving them he agrees to protect them as his own subjects and to see that they enjoy, as far as depends on him, perfect security. Thus we see that every sovereign who has granted asylum to a foreigner considers himself no less offended by injuries which may be done to the foreigner than if they were done to his own subjects. Hospitality was held in great honor by the ancients, and even by barbarian Nations such as the Germans. Those savage peoples who maltreated foreigners, such as the Scythians, who sacrificed them to Diana,(*a*) were regarded with horror by all Nations, and Grotius(*a*) says with reason, that by their extreme cruelty they cut themselves off from human society. All other Nations were justified in uniting together to chastise them.

§ 105. Their duties.

In recognition of the protection granted him and of the other advantages he enjoys, a foreigner should not content himself with obeying the laws of the country, but should give it his assistance when the occasion arises and contribute to its defense where the act does not conflict with the allegiance he owes to his own State. We shall see elsewhere what are his rights and obligations when the country in which he resides is engaged in war. But there is nothing to prevent him from defending it against pirates or brigands or against the ravages of flood or fire. Can he expect to live under the protection of the State and share in its many advantages and yet do nothing for its defense, and look on without concern at the dangers to which the citizens are exposed?

§ 106. To what public burdens they are subject.

A foreigner can not, indeed, be subjected to the public burdens which are directly connected with citizenship, but he must bear his share in all the others. Though exempt from military service and from the payment of such taxes as are destined for the maintenance of national rights, he must pay the duties imposed upon provisions, merchandise, etc.; in a word, all taxes which merely affect his residence in the State or the business on which he has come.

(*a*) The Taurians; see Grotius, *De Jure Belli et Pacis*, Lib. II, ch. xx, § 40, note 7.

§ 107. Foreigners remain citizens of their own state.

A citizen or subject of a State who absents himself for a time, without having the intention of abandoning the society of which he is a member, does not lose his citizenship by his absence, but keeps his rights and remains bound by the same obligations. Since he is received in a foreign country by reason of his being a member of the general society of mankind, and because of the intercourse which Nations are obliged to maintain with one another (Introd., §§ 11, 12; Book II, § 21), he must be regarded as a citizen of his own State and treated as such.

§ 108. A state has no rights over the person of a foreigner.

Hence a State, being obliged to respect the rights of other Nations and of men in general, irrespective of their nationality, can not claim any rights over the person of a foreigner who by his mere entrance into its territory does not become its subject. The foreigner can not claim the privilege of living in the country without obeying its laws; if he violates them he is punishable as a disturber of the public peace and an offender against the State; but he is not subject, as the citizens are, to all the commands of the sovereign, and if certain things are demanded of him which he does not wish to do, he may leave the country. Since he is free at all times to leave, the State has no right to detain him, unless it be temporarily or for very special reasons, as, for example, in time of war the fear lest he might carry to the enemy information as to the condition of the State and of its fortified places. From the voyages of the Dutch to the East Indies we learn that the Kings of Corea detain by force foreigners who are shipwrecked on their coasts; and Bodin(*a*) tells us that this custom, in violation, as it is, of the Law of Nations, existed in his time in Ethiopia and even in Russia. It is an attack alike upon the rights of the individual and upon those of the State to which he belongs. Things have greatly changed in Russia; one single reign, that of Peter the Great, has brought that vast Empire into the rank of civilized States.

§ 109. Nor over his property.

The property of an individual does not cease to belong to him because he happens to be in a foreign country, and it still forms part of the aggregate wealth of his Nation (§ 81). The claims which the head of the State might assert over the property of a foreigner would be equally contrary to the rights of the owner and to those of the Nation of which he is a member.

§ 110. Who are the heirs of a foreigner.

Since a foreigner remains a citizen of his own country and a member of his own Nation (§ 107), the property which he leaves on his decease in a foreign country should naturally pass to those who are his heirs according to the laws of the State of which he is a member. But this general rule does not affect his real property, which should be regulated by the laws of the country where it is situated (see § 103).

§ 111. Wills of foreigners.

As the right of making a will or of disposing of one's property in the event of death is a right resulting from ownership, it can not justly be taken from a foreigner. A foreigner has therefore a natural right to make a will. But, it is asked, what laws must he comply with, whether as to the form of the will, or as to its provisions? (1) As to its solemn form, the purpose of which is to attest the genuineness of the will, it seems that the testator must observe the forms which are prescribed in the State where the will is drawn up, unless the law of his own State has provided otherwise, in which case he is obliged to comply with the formalities prescribed by the latter if he wishes to make a valid disposal of the property which he possesses in his own country. I am speaking of a will which is to be opened in the place where the testator dies; for if a traveler makes his will and sends it sealed to his home country, it is the same as if the will had been written there, and the laws of his home country must be followed. (2) As for the actual provisions of the will,

---

(*a*) *De la République*, Liv. I, ch. VI.

we have already remarked that those which relate to realty must conform to the laws of the country where the realty is situated. A foreign testator can not dispose of property, personal or real, which he holds in his own country, except in the manner prescribed by its laws. But as for personal property, money and other effects, which he possesses elsewhere, or which he has with him, or which follow his person, a distinction must be made between the local laws, whose effect can not extend beyond the territory, and the laws which have a direct relation to him as a citizen. Since a foreigner remains a citizen of his own country he is always bound, wherever he happens to be, by this latter class of laws, and must conform to them in the disposition he makes of his personal property of whatever kind. The corresponding laws of the country where he happens to be, and of which he is not a citizen, are not binding upon him. Thus, a man who makes his will and dies in a foreign country can not deprive his widow of so much of his personal property as is assigned to her by the laws of the State of which he is a citizen. Thus, a citizen of Geneva, being bound by the law of Geneva to leave a certain share of his property to his brothers, or to his cousins if they are his nearest heirs, can not deprive them of it, so long as he remains a citizen of Geneva, by making his will in a foreign country; and, on the other hand, a foreigner dying at Geneva is not bound to comply in this matter with the laws of the Republic. It is quite otherwise with respect to local laws; they regulate what can be done in the territory, and have no force outside of it. Testators are no longer subject to them, when once they are outside of the territory, and such of their property as is likewise outside of the territory is unaffected by them; whereas a foreigner is bound by them with respect to the property he holds within the territory. Thus, a citizen of Neufchatel, who is forbidden to entail property held in his own country, may, if he dies in a country where entails are permitted, dispose in this manner of property which he has there and which is out of the jurisdiction of his own country; while a foreigner making a will in Neufchatel can not entail even personal property which he holds there, unless, indeed, it may be said that his personal property is excepted by the spirit of the law.

§ 112. Droit d'aubaine.

The principles we have laid down in the three preceding chapters suffice to show how little justice there is in the practice of certain States which convert into the public treasury the property left there by a foreigner at death. This practice is based upon what is called *droit d'aubaine*, by which foreigners are prevented from succeeding to property held in the State either by citizens or aliens, and are therefore incapable of being appointed by will as heirs or of receiving legacies. Grotius justly observes "that this law has come down from ages when foreigners were almost regarded as enemies."(*a*) Even when the Romans had become a highly civilized and enlightened Nation they could not accustom themselves to regard foreigners as men having rights in common with them. "The Nations," says the jurist Pomponius, "with whom we have neither bonds of friendship, nor of hospitality, nor of alliance, are not our enemies; nevertheless, if our property falls into their hands they become the owners of it; our free citizens become their slaves, and they are on the same footing with respect to us."(*b*) It can not be thought that so wise a people retained such inhuman laws except as a means of retaliating upon Nations which were not bound to them by a treaty of any sort and which could not otherwise be brought to terms. Bodin(*c*) shows that the *droit d'aubaine* is derived from these

---

(*a*) *De Jure Belli et Pacis*, Lib. II, cap. VI, § 14.

(*b*) Digest. Lib. XLIX, Tit. XV, De Captivis et Postliminio. (I make use of the translation by President de Montesquieu, in his *Esprit des Lois*.)

(*c*) *De la République*, Liv. I, ch. VI.

worthy sources. It has been successively mitigated, or even abolished, in most States. The Emperor Frederic II was the first to abrogate it by an edict, which allowed "all foreigners dying within the limits of the Empire to dispose of their property by will, or if they died intestate, to have their nearest relatives as heirs." (*a*) But Bodin complains that the edict has been very badly carried out. How can there remain any vestige of so barbarous a practice in the Europe of our days, which is so enlightened and so influenced by humane principles? The natural law can only permit it by way of rataliation. This is the use made of it by the King of Poland in his hereditary States. The *droit d'aubaine* exists in Saxony, but its just and equitable sovereign puts it into effect only against those Nations which on their part subject the Saxons to it.

§ 113. The right of traite foraine. The right of *traite foraine* is more in accord with justice and with the mutual duties of Nations. This is the right by virtue of which the sovereign keeps a moderate part of the property, whether of citizens or of foreigners, which passes out of the State into foreign hands. As such property is thus lost to the State, it is reasonable that the State should receive fair compensation for it.

§ 114. Realty held by a foreigner. Every State is at liberty to grant or to refuse to foreigners the right to own land or other real property in its territory. If it grants the right, such property held by foreigners remains subject to the jurisdiction and to the laws of the State and liable to taxation like other property. The sovereignty of the State extends over its whole territory, and it would be absurd to except certain portions of it because they are owned by foreigners. If the sovereign does not permit foreigners to possess realty, no one may rightly complain; for the sovereign may have very good reasons for so doing, and since foreigners can claim no rights in his territories (§ 79) they should not take it ill if he uses his power and his rights in the manner he thinks best for the State. Moreover, since the sovereign may refuse to foreigners the right to possess realty, he may, of course, grant the right subject to certain conditions.

§ 115. Marriages of foreigners. Generally speaking, there is no reason why foreigners should not be able to marry in the State. But if a Nation finds that such marriages are hurtful or dangerous to it, it has the right and is even in duty bound to forbid them or to grant the permission subject to certain conditions. And as the determination of what is best for the State belongs to the State itself, or to its sovereign, other Nations must accept what it enacts on this subject. It is forbidden in nearly all States for citizens to marry foreigners of a different religious belief. In several parts of Switzerland a citizen may not marry a foreign woman unless he furnishes proof that she brings him in marriage a sum fixed by law.

(*a*) Bodin, *De la République*, Liv. I, ch. VI.

CHAPTER IX.

The Rights Which Remain to All Nations after the Introduction of Territorial Domain and Private Property.

§ 116. What are the rights of which men can not be deprived.

We have previously stated that an obligation gives rise to a correlative right to the things without which the obligation can not be fulfilled; hence every absolute, necessary, and indispensable obligation gives rise to rights which are equally absolute, necessary, and indefeasible. Nature does not impose obligations upon men without giving them the means of fulfilling them. They have an absolute right to the necessary use of these means; nothing can deprive them of this right, just as nothing can dispense them from their natural obligations.

§ 117. The right which survives from the original state of community of ownership.

In the original state of community of ownership men had, without distinction, a right to the use of all things, so far as was necessary to satisfy their natural obligations; and since nothing can deprive them of this right, the introduction of territorial domain and private property could not have come about except by leaving to every man the necessary use of things; that is to say, the use of them when absolutely necessary to the fulfillment of his natural obligations. It must be held, therefore, that ownership of property was only introduced with the implied restriction that every man retains some right to the things subjected to ownership in those cases when, without that right, he would be absolutely deprived of the necessary use of such things. This right is a necessary survival of the original rights under community of ownership.

§ 118. The right remaining to each nation over what belongs to the others.

Private ownership as between Nations does not, therefore, prevent each of them from still having some right over what belongs to the others in cases when the exclusive ownership of certain things by another would absolutely deprive a Nation of the necessary use of them. The principle can only be justly reduced to practice when all the circumstances are carefully considered.

§ 119. The right of necessity.

The same is to be said of the *right of necessity*. This is the right which mere necessity gives to certain acts, otherwise unlawful, when without the doing of those acts it is impossible to fulfill an indispensable obligation. We must be perfectly sure that in the given instance the obligation is really indispensable and that the act in question is the only means of fulfilling it. If one or the other of these two conditions is wanting, the right of necessity does not exist. Details of this subject can be found in treatises on the natural law, and especially in those of Mr. Wolf. I shall do no more than recall here briefly the principles which are needed to explain the rights of Nations.

§ 120. The right to procure food supplies by force.

The earth is intended to supply its inhabitants with food; hence a man who is without resources is not called upon to starve because all the means of supplying his wants are controlled by others. When, therefore, a Nation is in absolute need of supplies of food, it can force its neighbors, who have an over-supply, to furnish it food at a just price, and it can even take what it needs by force if its neighbors are unwilling to sell. Its urgent necessity restores the original state of common ownership, the abolition of which could not deprive anyone of the necessities of life (§ 117). The same right belongs to individuals when a foreign Nation refuses them just assistance. Captain Bontekoe, a Dutchman, having lost his vessel on the high seas, saved himself and a part of his crew in the ship's boat, and landed on the coast of India, whose savage inhabitants refused him food. The Dutch obtained it sword in hand.(*a*)

§ 121. The right to make use of things belonging to another.

Likewise, if a Nation has urgent need of vessels, wagons, horses, or even of the personal labor of foreigners, it may make use of them, by force if consent can not be had, provided the owners are not under a like necessity themselves. But as its right to these things is merely that which necessity gives it, it must pay for the use it makes of them if it is able to do so. European practice is in accord with this principle. Foreign vessels which happen to be in port are pressed into service in a time of need, but payment is made accordingly.

§ 122. The right to carry off women.

Let us say a word on a more unusual case, which authors make mention of but which rarely presents an occasion for the use of force in these days. A Nation can not maintain its continuous existence except by the procreation of children. A Nation of men is therefore justified in procuring women, who are absolutely necessary to its preservation; and if its neighbors have more than are needed and refuse to give up any, the Nation may use force to obtain them. We have a famous instance of this in the rape of the Sabine women.(*b*) But if a Nation has the right to obtain, even by force of arms, the liberty of seeking women in marriage, no individual woman may be constrained in her choice, nor does she become by right the wife of the man who carries her off. This is a point which has not been sufficiently noticed by those who have decided unreservedly that the Romans did not commit an act of injustice on that occasion.(*c*) It is true that the Sabine women submitted with good grace to their fate; and when their nation took up arms to avenge the act it was sufficiently evident, from the ardor with which they rushed in between the combatants, that they willingly acknowledged the Romans as their lawful husbands.

Let us add, however, that if, as many assert, the Romans were in the beginning no more than a band of robbers united under Romulus, they did not form a real Nation, a true State. Neighboring States were perfectly justified in refusing to give them women, and there was nothing in the natural law, which only approves of civil societies for a just purpose, to require that a society of vagabonds and robbers be given the means of perpetuating itself; and much less did the natural law authorize them to procure those means by force. And in like manner no Nation was obliged to furnish the Amazons with men. That nation of women, if it ever really existed, put itself, by its own fault, in a position where it could not maintain itself without foreign help.

§ 123. The right of passage.

The right of passage has also survived from the original conditions under which the entire earth was the common property of all and each individual might go here or there at will, according to his needs. No one may be entirely deprived of that right (§ 117), but the exercise of it has been restricted by the introduction of domain and private property, following which the right of passage can only be exercised with due regard to the rights of others. The effect of ownership is to put the object at the disposition of the owner in preference to all others. If, then, the owner of a tract of land should see fit to forbid you to enter upon it, you must have some reason, stronger than all his, to enter upon it in spite of him. Such would be the *right of necessity*. It permits an action which under other circumstances would be unlawful, namely, a violation of the rights of ownership. When you are compelled by actual necessity to enter upon the lands of another, for example, if you can not otherwise escape from imminent dangers, if you can not

---

(*a*) Bontekoe's voyage in the *Voyages des Hollandais aux Indes Orientales*.

(*b*) Livy, Lib. I.

(*c*) See Wolf, Jus Gent., § 341.

obtain the necessaries of life, or the means of satisfying some other indispensable obligation, except by passing across those lands, you may force a right of way from one who unjustly refuses you. But if the owner is compelled by an equal necessity to refuse you access the refusal is just, since his right prevails over yours. Thus a vessel, under stress of weather, has a right to enter into a foreign port, and may even force an entrance; but if the vessel is carrying persons infected with the plague the owner of the port may drive it off by firing upon it, and in so doing will offend neither against justice, nor even against charity, which in such a case should certainly begin at home.

§ 124. And of procuring things of which one has need.

The right of passage through a country would be in most cases worthless unless one had likewise the right of procuring at a fair price the things of which one has need; and we have already shown (§ 120) that in a time of necessity food supplies can be obtained even by force.

§ 125. The right to dwell in a foreign country.

In speaking of exile and banishment, we observed (Book I, §§ 229–231) that every man has the right to find a habitation somewhere upon the earth. The principles we established with respect to individuals can be applied to whole Nations. If a people are driven from the lands which they inhabit they have the right to seek a place of abode. The Nation to which they present themselves should, therefore, grant them lands in which to dwell, at least for a time, unless it has very serious reasons for refusing. But if its own lands are not large enough for itself, it can have no obligation to admit foreigners into them permanently; and should it not find it convenient even to grant them the rights of perpetual residents, it may send them away. As they have the further resource of seeking an abode elsewhere, they can not avail themselves of the *right of necessity* and remain there despite the Nation's wish. But, after all, these fugitives must find an asylum somewhere, and if every Nation refuses to grant it to them, they may justly settle in the first country where they find sufficient land without having to deprive the inhabitants. However, even in this case, necessity only gives them the right of dwelling in the country, and they should submit to whatever tolerable conditions are imposed upon them by the lord of those lands; they should pay him tribute, become his subjects, or at least live under his protection and depend upon him in certain respects. This right, as well as the two preceding ones, is a survival from the original community of ownership.

§ 126. Things of which the supply is not exhausted by use.

We have been at times obliged to anticipate the matter of the present chapter when points arose in connection with the subjects treated. Thus, in speaking of the high seas, we remarked (Book I, § 281) that things of which the supply is inexhaustible can not become the subject of ownership or private property, because in the free and independent state in which nature has produced them they can be equally useful to all men. Even things which in other respects are subject to private ownership, if they are not exhausted by a certain use of them, remain common property as to that use. Thus a river may be subject to ownership and sovereignty, but as a body of running water it remains common to all men; that is to say, the owner of the river can not prevent any one from drinking or drawing water from it. Thus even those parts of the sea that are held in possession are large enough to be navigated by all men, so that the holder of them can not refuse passage through them to a vessel from which he has nothing to fear. But it may possibly happen that persons can not take advantage of that inexhaustible supply without inconvenience or injury to the owner, in which case he would be justified in refusing to allow it to them. For example, if you can not come to my river for water without passing across my lands and injuring the crops which grow upon them, I may for that reason exclude you from the use of the running water, though the supply of it is inexhaustible; your right is lost by accident. This leads us to speak of another right, closely connected with the one just mentioned, and even derived from it—the right of *innocent use.*

§ 127. The right of innocent use.

Innocent use is that use which can be made of a thing without causing either loss or inconvenience to the owner, and the right of innocent use is the right to such use of another's property as causes neither loss nor inconvenience to the owner. I said that this right is derived from the right to things of which the supply is inexhaustible. In fact, a thing which can be useful to another without loss or inconvenience to the owner is in that respect inexhaustible by use, and therefore the natural law reserves to all men a right to it, in spite of the introduction of private ownership. Nature destines her gifts for the common benefit of all men and does not intend that they be withdrawn from uses to which they can be put without hurt to the owner or without lessening the use he can make of, or the advantages he can obtain from, his rights.

§ 128. Nature of this right, in general.

This right of innocent use is not a perfect right, as the right of necessity is, since it is for the owner to decide whether the use which others desire to make of what belongs to him will cause him either harm or inconvenience. Were others to attempt to decide for him, and to force him in case he should refuse to accept their decision, he would be no longer owner of his property. Frequently the person who wishes to profit from the use of a thing will consider that use as innocent when it is really not so, and in attempting to force the owner he would run the risk of committing an act of injustice, or rather he would actually commit one, since he would be violating the right which belongs to the owner of deciding what he should do in the matter. Hence, in all cases which are open to doubt, there exists only an imperfect right to the innocent use of things which belong to another.

§ 129. And in cases not open to doubt.

But when the use of a thing is clearly innocent and there is no room at all for doubt, a refusal to permit it would be an injury; for, besides being a manifest deprivation of the right of the person who seeks to enjoy the innocent use, it is an evidence of a disposition of hatred or contempt for him. To refuse to grant to a merchantman a right of way through a strait or to fishermen the liberty of drying their nets on the sea-shore or of drawing water from a river is a clear denial of their rights of innocent use. But in all cases, when necessity does not require immediate action, the owner may be asked the reasons for his refusal, and if he will not give any he may be regarded as unjust or hostile and treated according as prudence may dictate. In general, our sentiments and conduct towards him will be regulated by the greater or less weight of the reasons which he advances.

§ 130. The exercise of this right as between nations.

Nations still retain, therefore, a general right to the innocent use of things which belong to any particular one of them. But when it is attempted to apply this right in specific cases, it is for the Nation owning the property to decide whether the use which is sought to be made of it is really an innocent one, and if it refuses to grant the use it should give its reasons, since it can not deprive others of their right out of mere caprice. All this is a matter of right; for it must be carefully remembered that private ownership is not so complete as to absorb the innocent use of things. Ownership merely gives the right to decide in specific cases whether the use is really an innocent one. Now this decision should be based upon reasons, and these must be set forth if we wish to make it clear that we are acting sincerely and not out of caprice or ill-will. All this, I repeat, is a matter of right. We shall see in the following chapter how a Nation should use its rights conformably with its duties towards other nations.

CHAPTER X.

How a Nation Should Use its Right of Territorial Domain So as to Fulfill its Duties Towards Other Nations in the Matter of Innocent Use.

§ 131. General duty of the owner.

Since the Law of Nations embraces the duties of Nations as well as their rights, it is not enough to have set forth, on the subject of *innocent use*, what Nations may rightfully exact from the owner, but we must now consider how in turn the conduct of the owner should be influenced by his duties towards other Nations. As it belongs to the Nation which owns the property to decide whether the use is really innocent and causes it neither harm nor inconvenience, it should not only not base its refusal to grant the use upon other than real and substantial reasons, for that is a principle of equity; but it should not even stop at trifles, at a slight loss, or some little inconvenience, for the claims of humanity and the mutual love which men owe one another call for greater sacrifices. It would certainly be little in keeping with that universal charity which should unite all mankind to refuse to an individual or to a whole Nation a benefit of some consequence just because a slight loss or trifling inconvenience may result to us from granting it. On this principle, therefore, a Nation should regulate its conduct on every occasion with due regard to the needs of others, and should overlook a small expenditure, or an inconvenience that may be put up with, for the sake of the great benefits that will accrue to others. But it is under no obligation to incur serious expenses in order to grant to others the use of a certain thing, when such use is neither necessary nor very useful to them. The sacrifice that we are here asking for is not at all contrary to the interests of the Nation. It is reasonable to think that others will return the favor, and on the whole the policy would be beneficial to one and all.

§ 132. Innocent passage.

Private ownership can not have deprived Nations of the general right of passing to and fro about the earth, for purposes of mutual intercourse and commerce and for other good reasons. The owner of a country can only refuse a passage to others on those special occasions when it might be hurtful or dangerous to him; but when sought for a lawful cause it should be granted as often as it does not involve inconvenience to the owner. Since the grant is obligatory upon him, and he can not refuse it if he wishes to fulfill his duties and not abuse his rights of ownership, he can not lawfully attach burdensome conditions to the grant. When the Count of Lupfen improperly held up certain commercial goods in Alsace, complaint was brought to the Emperor Sigismund, who was then at the Council of Constance. The Emperor assembled the electors, the princes, and the deputies of the towns to investigate the case. The opinion of the Burgrave of Nuremburg deserves to be recorded here: "God," he said, "has created heaven for Himself and His saints, and has given the earth to men to be used by rich and poor alike. Roads are for man's use, and God has not subjected them to any taxes." He ordered the Count of Lupfen to restore the goods, and to pay costs and damages, since the seizure could not be justified by any private rights over the roads. The Emperor approved of the decision and passed sentence accordingly.(*a*)

§ 133. Pledges may be demanded.

But if a State apprehends any danger from its grant of the right of passage it may require pledges from those who desire the right, and these pledges may not be refused, since the right of passage only exists on condition of its not being hurtful to the State.

(*a*) Stettler, vol. I, p. 114; Tschudi, vol. II, pp. 27, 28.

§ 134. Passage for commercial purposes.

In like manner passage should be granted for commercial purposes, and as such passage is ordinarily not harmful, a refusal to allow it, if not based upon good reasons, is an injury to a Nation and an attempt to deprive it of the means of trading with other Nations. If such passage causes any inconvenience, or any expenditures for the maintenance of highways and canals, compensation may be obtained by the imposition of tolls (Book I, § 103).

§ 135. Residence in the state.

In describing the effects of ownership, we said earlier (§§ 94 and 100) that the owner of a territory can forbid entrance into it, or grant the privilege upon such conditions as he thinks fit to impose. We were speaking then of his external right—that right which foreigners are bound to respect. We shall here consider the matter from another point of view and regard it relatively to the duties of the owner, to his right in conscience, and so we say that he can not without specific and important reasons refuse to allow either passage over or residence in the territory to foreigners who request it for good reasons; for since in this case both passage and residence are innocent uses the natural law does not permit of their being denied, and although other Nations, and other men in general, are obliged to defer to the judgment of the owner (§§ 128, 130), he none the less acts contrary to his duty if he refuses unreasonably; his action is without any real sanction and is a mere abuse of his external right. Hence a State may not, without special and urgent reasons, refuse the right of residence to a foreigner who comes to the country in the hope of regaining his health or for the purpose of studying at its schools and universities. Differences of religious belief do not justify the exclusion of such persons, provided they refrain from asserting their doctrines; for such differences do not deprive them of the rights of humanity.

§ 136. How foreigners who ask to settle in a country should be treated.

We have seen (§ 125) that the right of necessity can, in certain cases, authorize a people who have been driven from their own country to settle in the territory of another Nation. Every State should, of course, give to so unfortunate a people such help as it can furnish without neglecting itself; but to grant them a settlement within its national domain is a very serious step to take, the consequences of which the ruler of the State should weigh carefully. The Emperors Probus and Valens found that they had made a mistake in having admitted into the Empire numerous bands of Gepidæ, Vandals, Goths, and other barbarians.(*a*) If the sovereign anticipates danger or serious inconvenience from admitting these fugitive peoples, he is justified in turning them away, or, if he receives them, in taking such precautions as prudence may dictate. One of the safest will be not to permit these foreigners to dwell together in the same section of the country and preserve their national identity. Men who have not been able to protect their homes can claim no right to settle in the territory of another and remain there as a distinct body politic.(*b*) The sovereign who receives them can distribute them among the towns and provinces which are in need of inhabitants. In this way his act of kindness will be a gain to himself and will increase his power and advance the welfare of his State. How different Brandenburg has been since the French refugees went there! The great Elector, Frederic William, offered those unfortunate persons an asylum, bore the expenses of their journey, and settled them in his States with a princely liberality. By his charity and generosity he merited the title of a wise and able statesman.

(*a*) Vopiscus, Prob. c. XVIII; Ammian. Marcell., Lib. XXXI; Socrat., Hist. Eccles., Lib. IV, c. 28.

(*b*) Cæsar replied to the Tenchteri and the Usipetes, who wished to retain the lands they had taken possession of, that it was not just that they should invade the territory of another Nation when they had not been able to defend their own: "Neque verum esse, qui suos fines tueri non potuerint, alienos occupare." (*De Bello Gallico*, Lib. IV, cap. VIII.)

§ 137. The right arising from a general permission.

When by the laws or the custom of a State certain privileges are granted to foreigners in general, as, for example, the right of traveling freely in the country without express permission, of marrying there, of buying and selling certain goods, of hunting, fishing, etc., no one Nation may be excluded from the general permission without doing it an injury, unless there is some special and lawful reason for refusing to it what is granted to others indifferently. It is evident that we refer here to concessions of innocent use; and the very fact that the Nation grants such privileges to foreigners in general is sufficient proof that it considers the acts in question innocent as far as it is concerned, and is a declaration that foreigners have a right to them (§ 127); hence, as the use is conceded by the State to be innocent, the refusal of it would constitute an injury (§ 129). Besides, to refuse without reason to one Nation a privilege that is granted indifferently to all others is a discrimination which would constitute an injury, since it could only proceed from ill-will or contempt. If there is any special and well-founded reason for making the exception, the use of the things in question is no longer innocent with respect to the Nation excluded, and no injury is done it. Moreover, the State may make an exception from a general permission by way of punishing a Nation which has given just cause of complaint.

§ 138. Rights granted as special favors.

When rights of this character are granted to one or more Nations for particular reasons, the concession is made as a special favor, either as the result of an agreement or in recognition of some service; so that those who are refused the same rights can not take offense. The Nation does not thereby decide that the things with reference to which the rights are granted are open to innocent use, since the rights are not granted to all alike; so that the Nation, at its own good pleasure, can bestow rights over its private property without giving anyone a ground of complaint or a claim to the same favor.

§ 139. A nation should manifest a friendly attitude.

The duties of humanity go further than the mere granting to foreign Nations of the innocent use which they can make of what belongs to us; it even requires us to make it easy for them to profit thereby, as far as we can do so without injury to ourselves. Thus it is the part of a well-regulated State to see that there are a sufficient number of inns where travelers may obtain food and lodging at a just price, and to watch over their welfare and see that they are treated with fairness and consideration. It is the part of a civilized Nation to receive foreigners with kindness and courtesy, and to manifest in every way an attitude of friendliness. In doing so each citizen will fulfill his duties towards mankind and will at the same time be of service to his country. Honor is the certain reward of virtue, and the good-will which is won by kindness often produces results which are of great importance to the State. No Nation deserves higher praise in this respect than France; foreigners receive nowhere else a reception more kindly, or more adapted to keep them from regretting the immense sums which they yearly spend in Paris.

CHAPTER XI.

Usucaption and Prescription as Between Nations.

§ 140. Definition of usucaption and prescription.

Let us conclude our discussion of ownership and private property with an examination of a celebrated question on which the opinions of the learned are widely at variance. This question is, can usucaption and prescription take place as between independent Nations or States?

Usucaption is the acquisition of title to property founded upon long possession, uninterrupted and undisputed; that is to say, an acquisition which is proved by the mere fact of such possession. Wolf defines it as an acquisition of title founded upon a presumed abandonment. His definition explains the manner in which long and undisturbed possession can support a claim of ownership. Modestinus, following the principles of the Roman law, says that usucaption is the acquisition of title resulting from possession during a period defined by law.(*a*) These three definitions are in no way in conflict and can be easily reconciled by putting aside what relates to the civil law in the last of the three; we have tried to express clearly in the first of them the idea which is commonly associated with the term *usucaption*.

Prescription is the exclusion of all claim to a right from the fact that the right has been neglected during a certain length of time; or, as Wolf defines it, it is the loss of title by virtue of a presumed consent. This latter definition explains how long neglect of a right comes to work loss of title, and it agrees with the definition first given, in which we limited ourselves to setting forth what is commonly understood by the term. However the term *usucaption* is little used in French, and the term *prescription* includes all that is expressed by the Latin words *usucapio* and *præscriptio*. We shall therefore employ the term "prescription" whenever there is no special reason for employing the other.

§ 141. Usucaption and prescription are based on the natural law.

In order to decide the question before us we must first see whether usucaption and prescription are based on the natural law. Many noted authors have asserted and proved the affirmative.(*b*) Although in this treatise we frequently presume upon a knowledge of the Law of Nature on the part of the reader, it is in place here to set forth the arguments, since the point is disputed.

The ownership of property, and in particular of land, is not an institution of nature, but was merely introduced with its approval for the benefit of the human race. Hence it would be absurd to say that once private ownership has been introduced the natural law can secure to the owner a right capable of creating disturbances in human society. Of such character would be the right of an owner to neglect entirely a thing that belongs to him, to leave it for a long time with all the appearance of abandoned property or property not his, and then, after all this, to come and take it from a possessor in good faith, who has perhaps acquired it at much cost to himself or who has received it by way of inheritance or as his wife's dowry, and who would have acquired other property if he could have known that his title to the property in question was neither lawful nor valid. Far from conferring such a right, the natural law requires of the owner the care of his property

---

(*a*) Digest. Lib. 3, de Usurp. et Usucap.

(*b*) See Grotuis, *De Jure Belli et Pacis*, Lib. II, cap. IV; Pufendorf, *Jus Nat. et Gent.*, Lib. IV, cap. XII; and, especially, Wolf, *Jus Nat.*, Part III, cap. VII.

and obliges him to make known his rights, so as not to lead others into error, and it approves of and guarantees his rights of ownership only upon these conditions. If he neglects them during such a length of time that his attempt to reassert them would endanger the rights of another, the natural law precludes him from doing so. Hence ownership can not be held to be a right of so broad and enduring a nature that it can be entirely neglected during many years, at the risk of all the inconveniences that can result in society, and afterwards be validly reasserted at will. Why should the natural law require that property rights be respected where they are made use of, except for the peace, safety, and welfare of human society? And therefore, on the same ground, it decrees that every owner who neglects his right during a long period and without good reason shall be presumed to have abandoned and renounced it absolutely. This is what constitutes the complete, *juris et de jure*, presumption of abandonment, upon which another may base a lawful title to the abandoned property. Such presumption is not equivalent to a mere conjecture as to the secret intentions of the owner, but to a condition of things which the Law of Nature orders to be regarded as true and permanent, with a view to maintaining order and peace among men. It constitutes, therefore, a title as secure and just as that of the original ownership itself, and is set up and supported by the same reasons. A possessor, resting his title in good faith upon a presumption of this nature, has therefore the support of the natural law, and that same law, in decreeing that the rights of each individual be secure and certain, does not allow his possession to be disturbed.

The right of *usucaption* properly signifies that one who holds property in good faith need not, after a long and peaceful possession, submit to have his title questioned, but can assert the mere fact of possession as sufficient proof of title, and thus resist the claim of the pretended owner on the ground of prescription. Nothing could be more just than this rule. If the claimant were to be allowed to prove his title it might happen that he would present evidence, on its face conclusive, but only so because of the loss of some document or other testimony, which would have shown how his right came to be lost or transferred. Would it be reasonable to let him question the rights of the possessor when, by his own fault, he has let things come to such a state that the truth is in danger of not being discovered? If one of the two must be exposed to the loss of his property it is but just that it should be the one who is at fault.

It is true that if the possessor in good faith should come to be fully certain that the claimant is the real owner, and that he has never abandoned his right, he is then bound by the internal law of conscience to restore all that the property of the claimant has added to his wealth. But this estimate is not easy to make and is dependent on the circumstances of the case.

§ 142. Foundation of ordinary prescription.

Since prescription can only be founded upon a complete or lawful presumption of abandonment, it can not operate if the owner has not really neglected his right. This condition implies three things: (1) that the owner can not allege invincible ignorance, either on his own part or on the part of those from whom he holds; (2) that he can not justify his silence by sound and lawful reasons; (3) that he has neglected his right, or been silent about it, during a considerable number of years, for neglect during a few years, being incapable of producing confusion by rendering uncertain the respective rights of the parties does not suffice to found or authorize a presumption of abandonment. It is impossible to determine from the natural law the precise number of years required to work prescription; that will depend on the nature of the property the ownership of which is in dispute and on the circumstances of the case.

§ 143. Immemorial prescription.

The statements in the preceding paragraph refer to ordinary prescription. There is another form of it, called *immemorial*, because it is founded upon immemorial possession; that is to say, a possession the origin of which is unknown or so involved in obscurity that it can not be shown whether the possessor holds title from the original owner or has obtained possession from someone else. This *immemorial* prescription secures the right of the possessor against attack; for he is rightfully presumed to be the owner so long as no valid reasons can be set up against his title; and on what could such reasons be based when the origin of his possession is lost in the obscurity of time? It should likewise secure his right from any adverse claim. Where would we stand if it were permitted to question a right recognized from time immemorial when the means of proving its validity have been lost in the course of time? Immemorial possession is therefore an indefeasible title, and immemorial prescription a plea which can not be overruled; both are founded upon a presumption which the natural law requires to be taken as an incontestable truth.

§ 144. Where reasons are alleged for silence.

In the case of ordinary prescription the above plea can not be raised against one who sets forth valid reasons for his silence, such as the impossibility of speaking, a well-founded fear, etc., because there is then no ground for the presumption that he abandoned his right. It is not his fault if a presumption has been formed to that effect, and he should not have to yield to it and can not be refused an opportunity of proving his title clearly. This method of defense against the claims of prescription has often been employed against princes who by their formidable power had for a long time reduced the weak victims of their usurpations to silence.

§ 145. Where signs are given that the owner does not mean to abandon his right.

It is likewise plain that prescription can not be set up against an owner who, not being able to prosecute his right at the time, can do no more than merely give sufficient signs, in one way or another, that he does not mean to abandon it. This is the purpose of protests. With sovereigns the title and the arms of a territory or province are retained, as an evidence that the right to it has not been abandoned.

§ 146. Prescription founded on acts of the owner.

Every owner who does, or expressly omits to do, certain things which can not be done or omitted without renouncing his right, thereby gives sufficient sign that he does not mean to keep it, unless he makes a definite statement to that effect. One is certainly justified in regarding as true what the owner makes sufficiently evident on occasions when he should speak the truth; consequently it is lawful to presume that he has abandoned his right, and if he attempts later on to revive it prescription can be set up as a bar to his claim.

§ 147. Usucaption and prescription hold as between nations.

Having shown that usucaption and prescription are based on the natural law, it is easy to prove that they are equally a part of the Law of Nations, and ought to operate as between Nations; for the Law of Nations is nothing else than the application of the Law of Nature to Nations, according to their special character (Introd., § 6). And far from an exception to the rule being created in this case, usucaption and prescription are of much more necessary application as between Nations than between individuals. Their disputes are of far larger bearing and their differences as a rule end only in bloody wars, and consequently, for the sake of the peace and welfare of the human race, it is very important that sovereigns be not easily troubled in their possession and that after a great number of years, if their title has not been contested during all that time, it should be regarded as valid and indefeasible. If it were allowed to trace back to past ages on every occasion there would be few sovereigns who would be secure in their rights, and there would be little hope for peace in the world.

It must be admitted, however, that usucaption and prescription, in so far as they are founded upon a presumption drawn from long silence, are frequently somewhat difficult of application as between Nations. It is well known how dan-

§ 148. It is more difficult to base them, as between nations, upon a presumed abandonment.

gerous it ordinarily is for a weak State even to suggest a claim to the possessions of a powerful monarch. Hence a long silence can with difficulty support a lawful presumption of abandonment. Consider, in addition, that as the ruler of the society has not ordinarily the power to alienate what belongs to the State, silence on his part, even did it suffice to raise a presumption of abandonment as far as he is concerned, does not impair the rights of the Nation or his successors. The question will then be whether the Nation has failed on its part to assert the right which its ruler was silent about and has thus given its implied approval of his attitude.

§ 149. Other principles which support prescription.

But there are other principles in virtue of which prescription may operate validly as between Nations. In view of the peace of Nations, the safety of States, and the welfare of the human race, it is not to be allowed that the property, sovereignty, and other rights of Nations should remain uncertain, open to question, and always furnishing cause for bloody wars. Hence, as between Nations, prescription founded upon length of time must be admitted as a valid and incontestable title. If a Nation has kept silence through fear, through a sort of necessity, the loss of its right is a misfortune which it must patiently endure, since there was no avoiding it. And why should it not bear that loss as well as it would have to bear the loss of towns and provinces taken from it by an unjust conqueror and forced from its possession by a treaty of cession? However, prescription can be set up on these grounds only in a case where the possession has been long-continued and uncontested, because it is necessary that matters should be finally decided and put upon a definite and permanent basis. The argument does not hold when there is question of a possession of only a few years' duration, during which time one might be led to keep silence from prudence, without thereby being open to the accusation of having let things become uncertain, and of reviving interminable quarrels.

As to immemorial prescription, what we have said regarding it (§ 143) will make it sufficiently clear to everyone that it must necessarily hold good as between Nations.

§ 150. Effects of the voluntary law of nations in this matter.

Since usucaption and prescription are so necessary to the peace and welfare of human society, we are right in presuming that all Nations have consented to admit the lawful and reasonable application of them, in view of the common good of all and the individual benefit of each Nation.

Prescription based on long tenure as well as usucaption are, therefore, supported even by the *voluntary* Law of Nations (Introd., § 21).

Further still, since, by virtue of that same law, Nations are regarded, in all cases open to doubt, as possessing equal rights in their mutual intercourse (*ibid.*), prescription founded upon long and undisputed possession should hold good as between Nations, without there being the right to set up that the possession is in bad faith, unless the evidence to that effect is unmistakable; for in the absence of such evidence every Nation must be thought to be in good faith. Such is the deference which one sovereign State should show to others; but as for its own conduct it should be guided only by the principles of the internal and necessary Law of Nations (Introd., § 28). Before the bar of conscience possession is only lawful where the possessor is in good faith.

§ 151. The law of treaties, or of custom, in this matter.

Since prescription is attended with so many difficulties, it would be of great advantage if neighboring Nations could come to an agreement on the subject by means of treaties, especially as to the number of years required to support a claim of prescription, since this last point can not as a rule be determined by the natural law alone. If, in the absence of treaties, custom has determined anything in this matter, the Nations between which such custom is in force should be guided by it (Introd., § 26).

CHAPTER XII.

Treaties of Alliance and Other Public Treaties.

§ 152. Definition of a treaty.

The question of treaties is doubtless one of the most important presented by the mutual relations and intercourse of Nations. Under the conviction of the little reliance that can be placed upon the natural obligations of political bodies and upon the mutual duties which their moral personality imposes upon them, the more prudent Nations seek to obtain through treaties that help and those benefits which would be secured to them by the natural law were that law not rendered ineffective by the mischievous designs of dishonest statesmen.

A treaty, in Latin, *fœdus*, is a compact entered into by sovereigns for the welfare of the State, either in perpetuity or for a considerable length of time.

§ 153. Arrangements, agreements, or conventions.

Compacts which have for their object matters of temporary interest are called agreements, conventions, arrangements. They are fulfilled by a single act and not by a continuous performance of acts. When the act in question is performed these compacts are executed once for all; whereas treaties are executory in character and the acts called for must continue as long as the treaty lasts.

§ 154. Who can enter into treaties.

Treaties can only be entered into by the highest State authorities, by sovereigns, who contract in the name of the State. Thus, conventions between one sovereign and another with respect to their private concerns, or between a sovereign and an individual, are not public treaties.

A sovereign who possesses full and absolute sovereignty has doubtless the right to treat in the name of the State which he represents, and agreements made by him bind the whole Nation. But all rulers have not the power to make public treaties on their own authority; some are forced to take counsel of a senate or of the representative body of the Nation. In the fundamental laws of each State must be sought the location of the power of contracting validly in the name of the State.

The fact, as stated, that public treaties can only be entered into by the highest State authorities does not prevent princes or communities from entering into such treaties when they are authorized either by grant from the sovereign or by a reserved right in the fundamental law of the State or by custom. Thus the Princes and the free cities of Germany, although dependent upon the Emperor and the Empire, have the right to enter into alliances with foreign powers. The Constitution of the Empire gives them, in this respect as in many others, the rights of sovereignty. Certain Swiss towns, although subject to a prince, have made alliances with the cantons—treaties which were originally permitted or tolerated by the sovereign and which from long custom came to be a matter of right.

§ 155. Whether a protectorate can enter into treaties.

Since a State which has put itself under the protection of another does not thereby cease to be a sovereign State (Book I, § 192), it can enter into treaties and contract alliances, unless it has expressly renounced the right to do so in the treaty creating it a protectorate. But this same treaty binds it for all future time, so that it can not enter into any agreement in conflict with the treaty; that is to say, an agreement violating the express conditions on which protection is given, or one essentially repugnant to treaties of protection in general. Thus the protected State can not agree to give help to the enemies of its protector nor allow them passage across its territory.

§ 156. Treaties entered into by commissioners or plenipotentiaries of sovereigns.

Sovereigns treat with one another through the medium of agents or commissioners, delegated with requisite authority, who are ordinarily called plenipotentiaries. We may apply to them all the rules of the natural law with reference to the acts of agents. The rights of the agent are defined by the commission given to him. He must not exceed it, but whatever he promises within the terms of his commission and the limits of his authority binds his principal.

In these days, in order to avoid all risk and difficulty, princes reserve to themselves the right of ratifying agreements drawn up in their name by their agents. *Full powers* are nothing else than an unlimited power of attorney. Since these powers should be given their full effect, too much care can not be used in conferring them. But as sovereigns can not be constrained, otherwise than by force of arms, to fulfill their engagements, it is usual not to consider their treaties as final until approved and ratified by the sovereigns themselves. There is less danger, therefore, in giving full powers to a diplomatic agent if his acts are not valid until ratified by the sovereign. But cogent and substantial reasons are needed to justify a sovereign in refusing to ratify the act of his plenipotentiary, and in particular he must show that his minister has exceeded the instructions given.

§ 157. The validity of treaties.

A treaty is valid if no exception can be taken to the manner in which it has been drawn up; for this, nothing more is required than that the contracting parties be duly authorized to act and that their consent be mutual and properly declared.

§ 158. The fact that they work injuriously does not render them void.

The fact, therefore, that a treaty works injuriously does not render it invalid. It is the part of one who enters into an agreement to weigh carefully the matter at issue before he binds himself; he may do with his property as he pleases; he may forego his rights and give up his advantages as he thinks proper; the person in whose favor the contract is made is not bound to inform himself of the other's motives and estimate their just worth. If a treaty could be revoked because it is found to work injuriously there would be no stability in the contracts of Nations. As between individuals the law of the State may set limits as to the amount of injury a contract may work and determine the point at which it shall be void. But sovereigns acknowledge no judge over their acts. How is the fact of the injury to be proved in their case? Who is to determine the degree of injury requisite to invalidate the treaty? It is clear that the peace and welfare of Nations require that the validity of their treaties should not be open to attack upon such vague and dangerous grounds.

§ 159. Duty of nations in this matter.

But a sovereign is none the less bound in conscience to pay due regard to justice and to observe it as far as possible in all his treaties. And if it should happen that a treaty entered into by him in good faith and without his perceiving any unfairness in it afterwards turns out to be injurious to the other party, nothing is more honorable, more praiseworthy, and more conformable to the mutual duties of Nations than to relax the terms of the treaty in so far as he can do so without failing in his duty to himself or without putting himself in danger or suffering considerable loss.

§ 160. Treaties disastrous to the state are null and void.

If a simple injury or some disadvantage does not suffice to render a treaty invalid, the rule does not hold where the results of the treaty are such as to bring about the ruin of the Nation. Since every treaty must be made under proper authorization, a treaty disastrous to the State is void and in no way binding upon it; for no ruler has the power to bind himself to do things which could bring about the ruin of the State when the sovereignty has been conferred upon him for its welfare. The Nation itself, being bound by the duties of self-preservation and self-protection (Book I, §§ 16 and foll.), can not enter into agreements opposed to its indispensable obligations. In the year 1506 the States-General of France, assembled at Tours, persuaded Louis XII to break the treaty which he had made with the Emperor Maximilian and his son the Archduke Philip, because the treaty was disastrous to the Kingdom. It is thus seen that neither the treaty nor the oath which accompanied it could bind the King, who had not the right to alienate the property of the crown.(*a*) We have discussed this latter cause of invalidity in Book I, Chap. XXI.

§ 161. Invalidity of treaties made for an unjust or dishonest purpose.

On the same ground of lack of power to contract, a treaty entered into for an unjust or dishonest purpose is absolutely void, since no one can bind himself to do acts contrary to the natural law. Thus, an offensive alliance entered into for the purpose of plundering a Nation which has done no injury to the parties can, or rather should be, broken.

§ 162. Whether it is allowed to enter into an alliance with those who do not profess the true religion.

It is asked whether an alliance can be made with a Nation which does not profess the true religion, whether treaties made with the enemies of Christianity are valid? Grotius(*b*) has treated the question in sufficient detail. His discussion of it might have been necessary at a time when the fierceness of party strife left still in doubt the principles which it had for a long time caused to be forgotten. Let us hope that the discussion is unnecessary in our day. The natural law is the sole rule of the treaties of Nations; religious differences are entirely foreign to them. Nations treat with one another as bodies of men and not as Christians or Mohammedans. Their common welfare requires that they be able to treat with one another and to rely upon one another in so doing. Any religious doctrines which should run counter to the natural law in this matter would deserve to be rejected; they could not come from the Author of Nature, who is ever the same and true to Himself. But if the principles of a religion were of such a character as to call for the use of violence in establishing that religion, and for the oppression of those who do not receive it, the natural law forbids a Nation to support that religion, or to join unnecessarily with its inhuman followers; and the common welfare of Nations calls upon them to unite against and put down such fanatics, who disturb the peace of the world and threaten all Nations.

§ 163. Obligation to observe treaties.

It is a principle of the natural law that one who makes a promise to another confers upon him a valid right to require the thing promised, and that, in consequence, a failure to keep a valid promise is a violation of a right belonging to the promisee and is as clearly an act of injustice as it would be to deprive him of his property. The basis of the peace, welfare, and safety of the human race is justice, the obligation of respecting the rights of others. The respect that others have for our rights of ownership and private property constitutes the security of our present possessions; the trust that we have in their promises is our security for the things which can not be delivered or executed on the spot. There would be no longer any security among men, nor any intercourse possible, if they did not consider themselves bound to keep faith with one another and to stand by their word. Hence, to maintain order and peace among Nations, which live together in a state of nature and acknowledge no superior on earth, the obligation of keeping faith with one another is as necessary as it is natural and unquestionable. Nations and their rulers should therefore observe their promises and their treaties inviolably. This great truth, though too often neglected in practice, is universally recognized by all Nations;(*c*) the reproach of perfidy is looked upon by sovereigns as a grievous

---

(*a*) See the Historians of France.

(*b*) *De Jure Belli et Pacis*, Lib. II, Cap. XV, § 8 et seq.

(*c*) Mohammed recommended strongly to his followers the observance of treaties. (Ockley, *Histoire des Sarrasins*, Tom. I.)

affront, but he who does not observe a treaty is assuredly perfidious, since he violates his faith. On the other hand, nothing is more honorable in a prince and his Nation than the reputation of inviolable fidelity to a promise. For that, as much and even more than for its bravery, has the Swiss Nation won for itself an honorable position in Europe and has deserved to have its friendship sought by the greatest monarchs, who have even confided to it the care of their person. The English Parliament has more than once thanked the King for his fidelity and zeal in assisting the allies of the crown. This national magnanimity is the source of an immortal glory; it creates the confidence of Nations and thus becomes the certain cause of power and honor.

§ 164. The violation of a treaty is an injury.

If promises made by treaty impose on the one side a perfect obligation, they produce on the other a perfect right. Hence, to violate a treaty is to violate the perfect right of the other contracting party, and is thus an injury to him.

§ 165. Treaties can not be entered into, if in conflict with existing ones.

A sovereign who is already bound by one treaty can not enter into others in conflict with the first. The matters concerning which he has entered into an agreement are no longer at his free disposal. If a later treaty should be found to be in conflict on some point with an earlier treaty, the later one is void as to that point, being an attempt to dispose of a thing over which the contracting party did not have full control. (We are here speaking of treaties made between different powers.) If the earlier treaty is a secret one it would be an act of downright bad faith to conclude one contrary to it and thus voidable when the need should arise. It is not even permitted to enter into agreements which under certain contingencies might be found to be in conflict with the secret treaty, and thereby void; unless, indeed, we are in a position to compensate in full our new ally; otherwise we would be wronging him in promising something without warning him that cases may arise in which we will not be at liberty to perform the promise. An ally who has been thus wronged has without doubt the right to denounce the treaty; but if he prefers to leave it in force the treaty continues valid on all points which are not in conflict with the earlier treaty.

§ 166. How agreements on the same subject may be made with several nations.

There is nothing to prevent a sovereign from entering into agreements of a like nature with two or more Nations if he is in a position to fulfill them at the same time with respect to all the contracting parties. For example, a treaty of commerce with one Nation does not interfere with similar treaties being made with other Nations unless the first treaty contains a promise that the same advantages will not be granted to others. Likewise, a State may promise to furnish troops in time of need to two different allies, provided it is in a position to furnish them and there is no reason to think that they will both have need of them at the same time.

§ 167. The nation with which the contract was first made is entitled to the preference.

If, nevertheless, both should have need of them at the same time, the Nation with which the contract was first made is entitled to the preference; for the agreement was absolute and unqualified with regard to it, whereas the contract with the second could only have been made subject to the rights of the first. If that condition is not stated expressly it is implied, as being a matter of right.

§ 168. No assistance is due an ally if the war is unjust.

The justice of its cause is another reason for preferring one ally to another. Indeed, no assistance at all can be given to a Nation whose cause is unjust, whether it is at war with one of our allies or with another State, for this would amount to contracting an alliance in an unjust cause, which is not permissible (§ 161). No one can validly bind himself to uphold injustice.

§ 169. General division of treaties. Those which relate to things already due by the natural law.

Grotius first divides treaties into two general classes: first, "those which deal merely with subjects on which Nations are already bound by the natural law," and secondly, those "by which an agreement is made to do something further." The first class serve to obtain for a Nation a perfect right to things to which it had only an imperfect right, so that it can thereafter exact what formerly it could only ask for as an office of humanity. Such treaties were very necessary between ancient Nations, which, as we have shown, did not consider themselves in any way bound towards Nations not in the number of their allies. They are of use even among the most civilized Nations, for the purpose of giving them a greater assurance of the help they can look for and of determining the extent of that help, so that they will know what to count on; and for the purpose of regulating what can not be generally determined to be a right of nature, thereby anticipating difficulties that may arise from the various interpretations of the natural law. Finally, as no Nation has unlimited resources for giving help to others, it is the part of prudence for a State to secure a right to that assistance which can not be given to all alike.

To this first class belong all mere treaties of peace and friendship in which the agreements of the contracting parties add nothing to the duties which men owe one another as brothers and as members of the human society, such as treaties which permit commerce, grant rights of passage, etc.

§ 170. Conflict of such treaties with the duties of a nation to itself.

If the help and good offices which are due by virtue of a treaty of that kind should happen on occasion to be incompatible with the duties of a Nation towards itself, or with those of a sovereign to his own Nation, it is necessarily implied that the treaty does not apply in such a case, for neither the Nation nor its sovereign can make an agreement to assist an ally when the contract will involve the neglect of the welfare of the State. If the sovereign has need, for the support of the State, of things which he has promised to another by treaty; if, for example, he has agreed to furnish grain and a time of scarcity should come when he has hardly enough for the sustenance of his own people, he should without hesitation prefer them to others; for his natural duty to foreign Nations only includes such help as it is in his power to give, and he can only enter into a treaty with that understanding. Now, it is not in his power to deprive his own Nation of food in order to assist another. In this case necessity forms an exception to the operation of the treaty, and the fact that it can not be fulfilled does not constitute a violation of it.

§ 171. Treaties containing a mere promise to do no injury to another.

Treaties by which a Nation merely agrees not to do any evil to the other contracting party, to refrain from any injury or offense, are not necessary and create no new rights, since each of the parties already possesses a perfect natural right to resist an injury, affront, or real offense of any kind. Nevertheless, it may be of great use, and at times necessary, to have such treaties with those uncivilized Nations which think themselves at liberty to treat foreigners as they like. It is also useful to have them with less savage Nations, which, while not so devoid of human feeling, are nevertheless less influenced by obligations of the natural law than by those which they have themselves contracted by solemn agreements; and would to Heaven that this way of thinking were peculiar to barbarians alone! The results of it are too often seen among those Nations which consider that they have advanced far ahead of the natural law. But the reputation of faithlessness is harmful to a ruler, and the fear of it thereby becomes effective even with those who care little to deserve the reputation of virtuous men and who easily dispose of the reproaches of conscience.

§ 172. Treaties dealing with matters not controlled by the natural law. Equal treaties.

Treaties in which agreements are made with respect to matters not controlled by obligations of the natural law are either *equal* or *unequal*.

Equal treaties are those in which the contracting parties promise the same things, or equivalent things, or, finally, things equitably proportioned, so that the parties stand on an equal footing. Of such character, for example, is a defensive alliance, in which the parties mutually stipulate to render each other the same help. Such, also, is an offensive alliance, in which it is agreed that each of the allies shall furnish the same number of vessels, of cavalry, and of infantry, or the equivalent of all three in vessels, troops, artillery, or money. Such, again, is a league in which the quota of each of the allies is regulated in proportion to the interest which the ally takes, or can have, in the object of the league. Thus, the Emperor and the King of England, in order to induce the Estates-General of the United Provinces to accede to the Treaty of Vienna of March 16, 1731, agreed that the Republic should only promise to its allies four thousand foot and one thousand horse, while they agreed to furnish it, in case of an attack upon it, each eight thousand foot and four thousand horse. Finally, we should class with equal treaties those which stipulate that the allies shall make common cause and support one another with all their forces. Although in fact the forces of all are not equal, the contracting parties are pleased to consider them as being so.

Equal treaties can be subdivided into as many classes as there are varieties in the character of national relations. Thus, they deal with conditions of commerce, with mutual defense, with belligerent relations, with rights of passage, which Nations mutually grant to one another or refuse to their allies; they contain stipulations not to fortify certain places, etc. Details would be to no purpose. The general principles of such treaties are sufficient, for the application of them to the various classes is easily made.

§ 173. Obligation to preserve equality in treaties.

Since Nations are no less bound than individuals to respect justice, they should make their treaties equal, as far as that is possible. When, therefore, the parties are in a position to grant each other the same mutual advantages, the natural law requires that the treaty between them be equal, unless there is some special reason for departing from the principle of equality; such a reason would be, for example, gratitude for a former favor, the hope of permanently securing the affection of a Nation, or some special motive which would make the conclusion of the treaty peculiarly desirable to one of the contracting parties, etc. And even in these cases the special reason involved, when properly regarded, creates an equality in the provisions of the treaty which seemed to be taken from them by the inequality of the things promised.

I can see those so-called great statesmen smile, men who employ all their subtlety in taking advantage of those with whom they deal and in arranging the conditions of the treaty in such a way that the whole benefit of it shall accrue to their master. Far from being ashamed of a conduct so opposed to justice, fairness, and natural honesty, they consider themselves honored by it and claim to merit the name of able negotiators. How long are public men to take credit in acts which would disgrace an individual? In private life a man who is without conscience will likewise laugh at the rules of morality and of law, but he will not do so before others, for it would be dangerous for him and hurtful to his reputation to appear to make light of them; whereas, in public life, men in power more openly set aside what is honest for what is useful. But, happily for the human race, it frequently happens that the advantages they think they have gained turn out to be disastrous to them, and even between sovereigns candor and uprightness prove to be the safest policy. All the astuteness and subterfuges of a famous minister, in connection with a treaty in which Spain had large interests at stake, worked finally to his own shame and to the injury of his sovereign; whereas the good faith and the generosity of England towards its allies obtained for it an excellent reputation and raised it to a position of great influence and respect.

§ 174. Distinction between equal treaties and equal alliances.

When persons speak of equal treaties they have ordinarily in mind the idea of an equality two-fold in character, an equality in the agreements and an equality in the position of the contracting parties. It is necessary to remove all ambiguity, so we must distinguish between *equal treaties* and *equal alliances*. Equal treaties are those in which equal promises are made, as we have just explained (§ 172), and equal alliances are those with respect to which the contracting parties stand on a footing of equality, drawing no distinctions of position, or at least admitting no marked superiority of one over the other, but merely a precedence of honors and of rank. Thus, Kings treat with the Emperor on a footing of equality, although they readily allow him precedence of rank. Thus, great republics treat with kings as their equals, in spite of their present custom of yielding precedence to them. And every true sovereign should in like manner treat with the most powerful monarch, since one is as sovereign and independent as the other (see above, § 37 of this Book).

§ 175. Unequal treaties and unequal alliances.

Unequal treaties are those in which the contracting parties do not promise the same things or equivalent things; and *alliances* are *unequal* in so far as they are based upon an inequality in the position of the contracting parties. It is true that an unequal treaty is generally at the same time an unequal alliance, since great potentates are not in the habit of giving more than is given them, or of promising more than is promised them, unless they are compensated by being shown greater respect and honors; and, on the other hand, a weaker State does not submit to onerous conditions without being obliged at the same time to recognize the superiority of its ally.

These unequal treaties, which are at the same time unequal alliances, are divided into two classes, the first including those *in which the greater obligations fall upon the more powerful State*, and the second those in which *the greater obligations are on the side of the weaker State.*

In the first class the more powerful State, while not being conceded any right over the weaker, is shown superior honors and respect. We have spoken of such treaties in Book I, § 5. It frequently happens that a great monarch desiring to have a weaker State on his side will offer it favorable terms and promise it gratuitous assistance, or at least greater assistance than is required from it in turn; but at the same time he will claim for himself a superiority of position and demand deference from the weaker State. It is this last point which constitutes the *unequal alliance*, and care must be taken not to confuse such alliances with those in which the parties treat with each other as equals, although the more powerful State for some special reason gives more than it receives, promises gratuitous assistance without exacting the same in return, or promises greater help or even the help of all its forces. In this case the alliance is equal but the treaty is unequal, unless, indeed, we wish to say that the greater interest which the one who gives most has in the treaty creates an equality not existing in the actual promises. Thus, when France found itself in straits during a war of great consequence with the House of Austria, and Cardinal Richelieu desired to subdue that formidable power, that skilful minister made a treaty with Gustavus Adolphus, in which all the advantage seemed to be on the side of Sweden. Looking only at the stipulations, one would have pronounced the treaty *unequal*, but the benefits France drew from it fully made up for that inequality. The alliance between France and the Swiss is also an *unequal* treaty if the stipulations only are regarded; but the valor of the Swiss troops has long since restored the balance of equality. The difference of interests and of needs has also helped in this. France is often involved in bloody wars, and has received from the Swiss vital assistance; whereas the Swiss Confederation, having neither ambition nor the desire for conquest, can live in peace with all the world; it has nothing to fear, since it has proved to ambitious sovereigns that its love of liberty gives it strength enough to defend its territory. This alliance may at times have seemed *unequal*. Our ancestors cared little for ceremony. But in actual fact, and especially since the absolute independence of the Swiss has been recognized even by the Empire, the alliance is certainly *equal*, although the Swiss Confederation readily gives that precedence to the King of France which modern custom renders to crowned heads and especially to great monarchs.

Treaties *in which the greater obligations are on the side of the weaker power*, that is to say, those which impose upon the weaker State more extended or heavier obligations, or which impose upon it burdensome and vexatious conditions, these *unequal treaties*, I say, are always at the same time unequal alliances; for it never happens that the weaker submits to burdensome conditions without being also obliged to acknowledge the superiority of the other State. These conditions are ordinarily imposed by the conqueror, or dictated by the necessity which obliges a weak State to seek the protection or assistance of a more powerful one, and the very fact of accepting them is a recognition by the weaker State of its inferiority. Moreover, such forced inequality in a treaty of alliance demeans and debases the weaker State at the same time that it exalts the more powerful State. It also happens that the weaker State can not promise the same assistance as the more powerful one, and must therefore make compensation by agreements which degrade it below its ally, and often even subject it in various respects to the other's will. Of this character are all treaties in which the weaker party agrees not to go to war without the consent of the stronger, or agrees to have the same friends and the same enemies as the stronger, to uphold and show regard to its dignity, not to have fortresses in certain places, not to trade with or enlist soldiers in certain free countries, to deliver up its vessels of war and not to build others, as the Carthaginians did in their treaty with the Romans, to maintain only a certain number of troops, etc.

These unequal alliances are further subdivided into two classes: *those which impair the sovereignty of the weaker State, and those which do not.* We have touched upon the subject in Book I, Chapters I and XVI.

Sovereignty continues undiminished when none of the rights which belong to it are transferred to the greater State, or are rendered dependent, in the exercise which is made of them, upon its will. But sovereignty is impaired when any of the rights which belong to it are transferred to the ally, or even if the exercise of them is merely made dependent upon the will of that power. For example, the treaty does not impair its sovereignty if the weaker State merely promises not to attack a certain Nation without the consent of its ally. In so doing it does not give up its right, it does not even subject the exercise of it to the other State; it merely agrees to a restriction in favor of its ally, and in so doing it no more diminishes its liberty than is necessarily done in promises of every kind. Restrictions of a like kind are constantly inserted into treaties where the alliance is on a basis of perfect equality. But an agreement not to make war upon any Nation whatever without the consent or the permission of an allied power, which on its part does not make a similar promise, constitutes an unequal alliance with impairment of sovereignty; for it is a deprivation of one of the most important functions of the sovereign power, or a subjection of it to the will of another. When the Carthaginians, in the treaty which put an end to the second Punic war, promised not to make war upon any State without the consent of Rome, they were, for that reason, thereafter considered as dependent upon the Romans.

§ 176. How an alliance with impairment of sovereignty can annul previous treaties.

When a Nation is forced to submit to another it may lawfully renounce its former treaties, if that is demanded of it by the power which has compelled it to make the unequal alliance. As it then loses a part of its sovereignty, its former treaties lose their binding force when the power which concluded them is destroyed. It is a necessity which can not be imputed to the State thus under compulsion; and since it would have the right to submit itself absolutely and to renounce its own sovereign, if that were necessary to save it, much more has it the right, in a like necessity, to abandon its allies. But a high-spirited people will exhaust every resource before submitting to terms so severe and so humiliating.

§177. Such alliances should be as far as possible avoided.

In general, since every Nation should be jealous of its honor and vigilant in maintaining its dignity and in preserving its independence, it will only contract an unequal alliance when driven to extremes or urged by the most pressing reasons. This applies particularly to treaties in which the greater obligations are on the side of the weaker State, and even more to those alliances which impair its sovereignty. A courageous people will only accept them under stress of necessity.

§ 178. Mutual duties of nations with respect to unequal alliances.

Whatever selfish politicians may say, we must either take the position that sovereigns are entirely freed from the obligations of the natural law or agree that it is not lawful for them, without just reasons, to force weaker States to surrender their national standing, much less their liberty, by an unequal alliance. The same assistance, the same consideration, the same friendship are due from Nation to Nation as from individual to individual when living in the state of nature. Far from seeking to humble a weak State and to deprive it of its most precious advantages, the more powerful States will respect it and maintain its dignity and its liberty if they are influenced more by virtuous motives than by pride, if honor means more to them than selfish gain; nay, even if they are wise enough to know their own best interests. Nothing more surely strengthens the power of a great monarch than the consideration he shows to all other sovereigns. The more respect and esteem he manifests towards weaker sovereigns, the more they honor him; they love a sovereign who displays his superiority over them only by conferring favors, and they are drawn to rely upon him as their support, so that he becomes the arbiter of their difficulties. Had he manifested an overbearing attitude towards them he would have been the object of their jealousy and of their fear, and might perhaps have one day fallen beneath their united efforts.

§ 179. When the greater obligations are on the side of the more powerful state.

But as a weak State should, in time of need, accept with gratitude the assistance of a more powerful State, and should not refuse to show that honor and deference which flatter the recipient without demeaning the giver, there is nothing more conformable to the natural law than for the more powerful State to generously grant its assistance without asking any return, or at least without demanding an equivalent. And it happens in this case also that self-interest and duty go hand in hand. It is not good policy for a great power to permit the lesser States surrounding it to be oppressed. If it allows them to be a prey to the ambition of a conqueror, the latter, in return, will soon become a source of danger for itself. Hence sovereigns, having ordinarily a care for their own interests, seldom fail to put this principle in practice; and we have those leagues which are formed now against the

House of Austria, now against its rival, according as the power of one or the other becomes predominating. On this principle is based that balance of power, the constant object of negotiations and of wars.

When a weak and poor Nation is in need of another sort of help, when it is suffering from famine, we have seen (§ 5) that those Nations which have food supplies should furnish them to it at a just price. It would be generous to furnish them at a lower price than they are worth, or to make it a present of them if it can not pay for them. To make such a Nation buy its supplies at the price of an *unequal alliance*, and above all at the price of its liberty, to treat it as Joseph formerly treated the Egyptians, would be an injustice almost as revolting as to let it die of hunger.

§ 180. How unequal treaties and alliances may be in conformity with the natural law.

But there are cases where the inequality of treaties and alliances, though it be dictated by private interest, is not contrary to justice, and consequently not contrary to the natural law. These cases are, in general, all those in which the duties of a Nation to itself, or its duties to others, call upon it to depart from the principle of equality. For example, if a weak State should desire to build a fortress which it does not need and is unable to defend, and which is so situated as to become very dangerous to a neighboring State if it should ever fall into the hands of a powerful enemy, the neighboring State could oppose the construction of the fortress, and should it find that it can not conveniently pay for the favor it asks, it may obtain its request by threatening on its part to bar all avenues of intercourse, to forbid trade with that State, to build fortresses, or to keep an army on the frontier, and to regard the action of that State as open to suspicion, etc. In so doing it is imposing unequal terms on the weak State, but the care of its own safety justifies the act. In like manner it can oppose the construction of a highway which would open up its territory to the enemy. The history of wars might present numerous other examples. But rights of this character are frequently abused; moderation is needed, as well as prudence, if the principle is not to become a means of oppression.

Sometimes the duties of a Nation towards another State will suggest and warrant a treaty in which the Nation assumes the heavier obligations without there being any ground for accusing the sovereign of failing in his duty to himself or to his people. Thus, gratitude, the desire of showing his appreciation of a favor, will lead a generous sovereign readily to enter into an alliance in which he gives more than he receives.

§ 181. Inequality imposed as a penalty.

An unequal treaty, or even an unequal alliance, may justly be imposed upon a State as a penalty, to punish it for being an unjust aggressor or to render it incapable of doing harm easily in the future. Such was the character of the treaty which Scipio Africanus the elder forced upon the Carthaginians after he had conquered Hannibal. A conqueror often imposes such terms, and if the war in which he has been successful was a just and necessary one, and the terms are not unduly severe, his conduct offends neither against justice nor equity.

§ 182. Other varieties, spoken of elsewhere.

The different treaties of protection, by which one State agrees to pay tribute to or become the fief of another, all form so many varieties of unequal alliances. But we need not repeat here what we have said of them in Chapters I and XVI of the first Book.

§ 183. Personal treaties and real treaties.

Another general division of treaties or alliances classifies them into *personal alliances* and *real alliances*. Personal alliances are those which are entered into by the contracting parties in their individual capacity, so that the treaty is restricted to and in a way bound up with their personality. Real alliances are based upon the subject-matter agreed upon and are independent of the persons of the contracting parties.

A personal alliance expires at the death of either contracting party.

A real alliance attaches to the State in its corporate capacity and continues during the life of the State unless the time of its duration is limited.

Care must be taken not to confuse these two kinds of alliances. Hence sovereigns are in the habit in these days of expressing themselves in such clear terms as to leave no uncertainty of the character of their treaties, and this is without doubt the best and safest policy. In default of this precaution the subject-matter of the treaty, or the wording of it, may furnish means of determining whether it is *real* or *personal*. We give below some general rules.

§ 184. The insertion in the treaty of the names of the contracting sovereigns does not make it personal.

First of all, the fact that the contracting sovereigns are mentioned by name in the treaty is not conclusive that the treaty is a personal one, for the name of the reigning sovereign is frequently inserted in the treaty for the sole purpose of showing with what State the treaty has been concluded, and not with the intention of giving it to be understood that the treaty has been concluded with him personally. This observation was made by the jurisconsults Pedius and Ulpian,(*a*) and is repeated by all later writers.

§ 185. An alliance made by a republic is a real one.

Every alliance made by a Republic is real in character, for it can only relate to the State in its corporate capacity. When a free people, a democratic State, or an aristocratic Republic concludes a treaty the State itself is the contracting party; its agreements are not terminable with the lives of those who have drawn them up; the individual members of the body politic and of the government die and are succeeded by others; the State ever remains the same.

Since, therefore, a treaty of this kind relates directly to the body of the State, it continues in force even though the State should change its republican form of government and should even adopt the monarchical form; for State and Nation are always the same, whatever changes take place in the form of the government, and the treaty made with the Nation remains in force as long as the Nation exists. But it is clear that all treaties of a State which relate to the form of its government are excepted from this rule. Thus, two democratic States which have expressly, or appear to have evidently, entered into a treaty for the purpose of mutually maintaining each other in their free institutions and democratic government, cease to be allies from the moment that one of them submits to be governed by a single individual.

§ 186. Treaties concluded by kings or other monarchs.

Every public treaty entered into by a King or by any other ruler is a treaty of the State; it binds the entire Nation which the King represents and whose powers and rights he exercises. It would seem, therefore, at first sight, that every public treaty should be presumed to be real as affecting the State itself. There is no doubt as to the obligation to observe the treaty; the question is merely as to its duration. Now, there is often room for doubt whether the contracting sovereigns intended to extend their mutual agreements beyond the term of their lives and to bind their successors. Circumstances change; a burden, at present light, may become insupportable, or too onerous under other conditions; while the views of one sovereign are not less likely to differ from those of another. Hence there are certain things which it is fitting that each prince be allowed to dispose of freely according to his policy. There are others which we willingly grant to one King, but would not care to grant to his successor. Hence the intention of the contracting parties must be looked for in the terms of the treaty or in the subject-matter of the agreements it contains.

(*a*) Digest. Lib. II, Tit. XIV; *De pactis*, Leg. VII, § 8.

§ 187. Permanent and transitory treaties.

Both permanent and transitory treaties are real treaties, since their duration does not depend upon the lives of the contracting sovereigns.

§ 188. Treaties made by a king for himself and successors.

Likewise, when a King makes a declaration in the treaty that it is binding *upon him* and his *successors*, it is evident that the treaty is *real*. It attaches to the State, and is meant to last as long as the Kingdom itself.

§ 189. Treaties made for the good of the kingdom.

When a treaty contains an express declaration that it is made *for the good of the Kingdom*, it is a clear indication that the contracting sovereigns had no intention that the treaty should remain in force only during their lives, but that they meant it to last as long as the Kindgom itself. The treaty is therefore *real* in character.

Independently even of such an express declaration, when a treaty is entered into in order to obtain for the State an advantage the enjoyment of which is continuous in character, there is no reason to believe that the Prince who contracted it meant to limit its duration to that of his own life. A treaty of this kind should therefore pass as real, unless there are very strong reasons to show that the Prince with whom it has been concluded has only granted to the other State the advantage in question out of consideration for the Prince then reigning and as a personal favor to him, in which case the treaty terminates with the life of the latter, since the motive for the grant expires with him. But a reservation of this kind is not to be readily presumed; for it would seem that if there had been an intention to that effect, it should have been expressed in the treaty.

§ 190. What presumption should exist in case of doubt.

In cases of doubt, when there is nothing to prove clearly whether the treaty is real or personal, it should be presumed to be real if its provisions are favorable in character, and personal if they are oppressive. Favorable provisions are in this case those which make for the common benefit of the contracting parties and are equally favorable to both; oppressive provisions are those which burden one party only or one party more than the other. We shall discuss this point at greater length in the chapter on the interpretation of treaties. No rule is more in accord with reason and justice than this one. When men can not obtain certitude in their business affairs they must have recourse to presumptions. Now, if the contracting parties have not been explicit in the wording of the treaty, it is natural, when the provisions are favorable and equally advantageous to both sides, to consider that it was their intention to make a *real* treaty, as being more useful to both Kingdoms; and if this presumption is actually a mistaken one, no harm is done to either party. But if the provisions are oppressive in any way, if one of the contracting States is overburdened, how can the presumption be raised that the Prince who entered into such an agreement meant to impose the burden upon his Kingdom in perpetuity? Every sovereign is presumed to seek the welfare and advantage of the State confided to his care; it can not be supposed, therefore, that he would consent to subject it permanently to a burdensome obligation. If necessity obliged him to do so, it was incumbent on the other party to obtain an explicit statement on the subject, and it is probable that the latter would not have failed to do so, knowing that men, and sovereigns in particular, are not apt to take upon themselves heavy and disagreeable burdens unless they are under a formal obligation to do so. If it should happen that the presumption is a mistaken one, so that the State possessing the rights is the loser thereby, it is the result of its own carelessness. Let us add that if either one or the other party must be deprived of rights, justice will be less offended if one should lose an advantage than if the other should suffer actual injury. It is the application of the well-known distinction between *de lucro captando* and *de damno vitando*.

There is no difficulty in classing equal commercial treaties in the number of those whose provisions are favorable, since these treaties are in general beneficial in character and entirely in accord with the natural law. As for alliances made in anticipation of war, Grotius says with reason that "defensive alliances are rather favorable in character than otherwise," and that "offensive alliances would seem to lean towards the side of hardship and oppression."(*a*)

We could not help touching briefly upon these questions, so as not to leave a serious break in the thread of our discussion. However, they have scarcely any application in actual practice, since in these days sovereigns commonly take the wise precaution of clearly defining the duration of their treaties. They contract *for themselves and their successors, for themselves and their kingdoms in perpetuity, for a certain number of years,* etc. Or they contract for the period of their reign only, or with respect to an affair which is personal to them, or for their families, etc.

§ 191. That the obligations and rights resulting from a real treaty pass to succeeding sovereigns.

Since public treaties, even those of a personal character, entered into by a king or any other duly authorized ruler, are State treaties and bind the entire Nation (§ 186), real treaties which are intended to remain in force independently of the persons of the contracting sovereigns undoubtedly bind their successors. The obligations which such treaties impose upon the State pass to all succeeding rulers, to the extent to which they are endowed with the public authority. It is the same with rights acquired by treaties; they are obtained for the State and pass to its succeeding rulers.

It is a quite general custom in these days for a succeeding sovereign to confirm or renew even the *real* alliances contracted by his predecessors, and it is prudent to take that precaution, since men regard more seriously an obligation which they have themselves expressly contracted than one which is imposed upon them by another, or to which they have only given their implied consent. In the former case they consider themselves bound by their word, in the latter only by their conscience.

§ 192. Treaties executed by an act done once for all.

Treaties which do not call for continuous acts, but are fulfilled by a single act, and are thus executed once for all, those treaties, unless indeed we prefer to give them another name (see § 153), those conventions, those compacts, which are executed by an act done once for all and not by successive acts, are, when once carried out, fully and definitely consummated. If valid, they naturally bring about a permanent and irrevocable state of things. These are not the treaties we have in view when investigating whether a treaty is real or personal in character. Pufendorf(*b*) furnishes us the following rules for the investigation: "(1) That succeeding sovereigns must observe the treaties of peace made by their predecessors. (2) That a succeeding sovereign must observe all the lawful conventions by which his predecessor has transferred any right to a third party." This is evidently apart from the question, for nothing more is said than that a treaty validly concluded by a prince can not be annulled by his successor. Who questions it? A treaty of peace is of its very nature intended to be permanent in its effects; once it has been duly drawn up and ratified it is a settled transaction; the treaty must be put into effect on both sides and observed according to its terms. If it is carried out immediately the affair is at an end. But if the treaty contains agreements calling for a series of continuous acts there will be always occasion to examine, according to the rules we have just given, whether it is in this respect *real* or *personal*, whether the contracting sovereigns meant to bind their successors to the acts in question or merely promised the acts for the period of their reign only. In like manner, as

---

(*a*) *De Jure Belli et Pacis,* Lib. II, Cap. XVI, § 16.

(*b*) *Jus Naturæ et Gentium,* Lib. VIII, Cap. IX, § 8.

soon as a right has been transferred by a lawful agreement it no longer belongs to the State which has ceded it; the transaction is complete and at an end. But if a succeeding sovereign discovers some flaw in the act and proves it to be real he does not thereby claim that the treaty is not binding upon him and therefore need not be carried out; he merely shows that the agreement never took place, for a defective and invalid agreement is no agreement at all.

§ 193. Treaties already carried out in part.

Pufendorf's third rule is no more to the point. It states "that if, after the other contracting sovereign has already carried out his part of the treaty, the King should happen to die before he has fulfilled his own stipulations, his successor is indispensably bound to make good the omission; for since what the other sovereign did on condition of receiving an equivalent has turned, or was meant to turn, to the advantage of the State, it is evident that if the State does not fulfill its part of the bargain the other sovereign then acquires the same right that a man has when he has paid something which he did not owe, so that the successor of the sovereign who has died is bound either to compensate the other fully for what has been done or to take upon himself what his predecessor agreed to perform." All that, I say, is apart from our question. If the alliance is a real one it continues in force notwithstanding the death of one of the contracting parties; if it is personal it expires with the death of either of the two (§ 183). But when a personal alliance comes to an end in this manner it is quite another question, and one to be decided by different principles, to determine the obligations of one of the allied States in case the other has already performed certain acts in pursuance of the treaty. We must distinguish the character of the acts done in fulfillment of the treaty. If they are fixed and definite acts, which must be performed reciprocally by way of mutual equivalent there can be no doubt that the State which has benefited by the acts of the other must do what it has promised in return if it wishes to stand by the agreement and if it is bound to stand by it; if it is not so bound and does not wish to stand by the agreement it must restore what it has received, put things in their former condition, or compensate the other State for what it has done. Not to do so would be to keep possession of the property of another. The case is not that of a man who has paid what he did not owe, but of one who has paid in advance for what has not been delivered to him. But if the personal treaty dealt with uncertain and conditional acts which were to be performed when the occasion should arise, with promises which are of no effect if the opportunity of fulfilling them does not offer itself, the obligation for the return of similar acts is likewise binding only when the occasion arises for performing the acts, so that when the alliance has terminated the parties cease to be under obligations to each other. In a defensive alliance, for example, two Kings have promised each other gratuitous assistance during the period of their lives. One of them happens to be attacked and receives the assistance promised, but dies before there is any occasion for him to return the favor; the alliance is at an end, and the successor of the King who died is under no obligation to the other State, unless, indeed, it be that of gratitude for the salutary assistance given to his State. And it is not to be thought that the sovereign who has given help without receiving any in return may thereby consider that any injury has been done him. The treaty was one of those speculative contracts where the gain or loss depends upon chance; he might have won, just as he happened to lose.

Another question might be raised here. A personal alliance expires with the death of one of the allies; but if the survivor, under the idea that the treaty is to continue in force with the successor of the deceased sovereign, carries out the treaty on his side, defends the other's country, saves some of the other's strongholds, or furnishes the army with provisions, what must the sovereign, who has been thus assisted, do on his part? Without doubt he should either let the alliance continue in force, as the ally of his predecessor thought it should, and this would constitute an implied renewal or extension of the treaty, or he should pay for the actual service he has received, according to a fair estimate of its value, if he does not wish the alliance to continue. Under these circumstances we can say with Pufendorf, that one who has rendered a service of this kind acquires the right of a man who has paid what he did not owe.

§ 194. A personal alliance expires if one of the contracting parties ceases to reign.

The duration of a personal alliance being restricted to the persons of the contracting sovereigns, if one of them ceases to reign, from whatever cause, the alliance is at an end; for the contract was between them as sovereigns, and he who has ceased to reign no longer exists as a sovereign, although he still lives as a man.

§ 195. Treaties personal by their nature.

Kings do not always treat solely and directly for their Kingdom; at times, by virtue of the power they possess, they conclude treaties relating to themselves personally, or to their family, and they may lawfully do so, since the safety and the true good of the sovereign is bound up with the welfare of the State. These treaties are personal in character and terminate with the death of the King or the extinction of his family. Of such character is an alliance made for the defense of a King and of his family.

§ 196. An alliance made for the defense of the king and of the royal family.

It is asked whether an alliance of this kind continues in force when the King and the royal family are deprived of the crown by a revolution. We have just pointed out (§ 194) that a personal alliance terminates with the reign of the sovereign who has contracted it. But that is to be understood of an alliance with a State which is limited, as to its duration, to the reign of the contracting sovereign. But the alliance of which there is question here is of another nature. Although it binds the State, just as all the public acts of the sovereign bind it, it is concluded directly in favor of the King and of his family; hence it would be absurd to hold that the alliance terminates at the moment they have need of it, and by the very event which it was intended to provide against. Moreover, the King does not lose his royal character by the sole fact that he loses possession of his Kingdom. If he is unjustly deprived of it by a usurper, or by rebellious subjects, he retains his rights, and among them are to be counted his alliances.

But who is to judge whether a King has been dethroned justly or unjustly? An independent Nation recognizes no judge over its conduct. If the body of the Nation declares that the King has forfeited his crown because of the abuse he sought to make of his power, and deposes him, it is justified in doing so, when its grievances are well founded; and no other power is warranted in passing upon its conduct. Hence the personal ally of the deposed King should not assist him against the Nation which has rightfully deposed him. To undertake to do so would be to do an injury to the Nation. England declared war on Louis XIV in 1688 because the latter upheld the cause of James II, who had been formally deposed by the Nation. It declared war against him a second time at the beginning of the present century because he acknowledged the son of the deposed King, under the title of James III. In doubtful cases, and in cases when the body of the Nation has not spoken or has not been able to speak, an ally should naturally be supported and defended; and it is then that the *voluntary* Law of Nations comes into force between States. The party which has driven out the King claims to have right on its side; the unfortunate King and his allies are persuaded that they have the same advantage, and, as there is no judge on earth to decide their dispute, recourse to arms is the only means of deciding between them; they engage in a formal war.

Finally, when the foreign sovereign has fulfilled in good faith his promises to the unfortunate monarch, when he has done all that he was called upon by the alliance to do for the defense of the latter or for his restoration to the throne, if his efforts are without avail he can not be required by the deposed Prince to keep up an endless war in his favor and to remain forever at enmity with the Nation or the sovereign which has deprived that Prince of the throne. He must at length think of peace, abandon his ally, and consider that this ally has himself abandoned his right from necessity. Thus Louis XIV was forced to abandon James II and to acknowledge King William, whom he had at first treated as an usurper.

§ 197. How far a real alliance is binding when the allied sovereign is deposed.

The same question is presented in *real* alliances, and, in general, in every alliance made with a State and not with the King in particular, for the defense of his person. Without doubt an allied State should be defended against any invasion, against all violence from without, and even against its own rebellious subjects; if it is a Republic it should likewise be defended against the designs of one who seeks to destroy the public liberty. But the sovereign who comes to its assistance should remember that he is the ally of the State, of the Nation, and not its judge. If the Nation has formally deposed its King, if the people of a Republic have driven out their public officers and set themselves at liberty, or if they have expressly or impliedly acknowledged the authority of an usurper, to oppose these domestic arrangements, or to dispute their justice or validity, would be to interfere in the government of the Nation and to do it an injury (see §§ 54 and foll. of this Book). The sovereign remains the ally of the State in spite of the changes which have taken place within it. However, if these changes are such as to render the alliance useless, dangerous, or unsatisfactory to him, he is at liberty to disclaim it; for he can say with good reason that he would not have entered into an alliance with that Nation if it had been under its present form of government.

Let us repeat here what we have just said of a personal alliance. However just may be the cause of a king who has been driven from his throne, either by his subjects or by a foreign usurper, his allies are not bound to keep up an eternal war in his favor. After fruitless efforts to re-establish him on the throne, they must at length give peace to their people and come to terms with the usurper, and in so doing they must treat with him as with a lawful sovereign. Louis XIV, whose resources were exhausted by a bloody and unsuccessful war, offered, at Gertruidenberg, to abandon his grandson, whom he had placed on the throne of Spain; and when affairs had taken another turn, Charles of Austria, rival of Philip, saw himself in turn abandoned by his allies. They grew weary of exhausting the revenues of their States to put him in possession of a crown which they believed he had a right to, but which they saw no chance of being able to obtain for him.

CHAPTER XIII.

The Dissolution and Renewal of Treaties.

§ 198. Expiration of alliances made for a definite period.

An alliance is terminated when the period for which it was made has elapsed. This period is sometimes fixed, as when the alliance is concluded for a certain number of years, and sometimes indefinite, as in the case of personal alliances, the duration of which depends upon the lives of the contracting parties. The period is likewise indefinite when two or more sovereigns form an alliance with some particular object in view, as, for example, that of expelling a body of barbarian invaders from a neighboring country, that of re-establishing a sovereign upon his throne, etc. The period of such an alliance is dependent upon the fulfillment of the undertaking for which it was formed. Thus, in the last example, when the sovereign has been restored to the throne, and is so firmly seated as not to be disturbed in the possession of it, the alliance formed with the sole object of restoring him is at an end. But if the undertaking is unsuccessful the alliance is likewise at an end as soon as the impossiblity of attaining its object is recognized; for it is clear that an undertaking must be abandoned when it is recognized to be hopeless.

§ 199. The renewal of treaties.

A treaty entered into for a limited time can be renewed by common consent of the contracting parties, and this consent may be either express or tacit. When a treaty is renewed by express agreement it is as if a new treaty of like character were concluded.

The tacit renewal of treaties is not to be easily presumed, for agreements of such importance well deserve to receive the express consent of the parties. Hence the presumption of the tacit renewal of a treaty can only be based upon acts of such a character that they would not have been performed except in virtue of the treaty. But even in this case the question presents difficulties; for, according to circumstances and to the nature of the acts performed, nothing more may be proved than a mere continuation or extension of the treaty, which is something quite different from a renewal, especially as regards the term. For example, England has a treaty of subsidy with a German prince, by which the latter is to maintain during ten years a certain number of troops at the disposal of the English crown, on condition of receiving each year a stipulated sum. After the ten years have expired, the King of England pays the sum stipulated for one year; his ally receives it, and the treaty is thereby tacitly continued for one year; but it can not be said to be renewed; for the fact that the payment was made and the troops maintained an additional year imposes no obligation to continue doing so during ten consecutive years. But let us suppose that a sovereign has agreed with a neighboring State to give it a million francs for the privilege of maintaining a garrison in one of the latter's fortresses during a period of ten years. At the end of the ten years, in place of withdrawing his garrison, the sovereign tenders a second million, which his ally accepts; the treaty, in a case of this kind, is tacitly renewed.

When the period set for the treaty is at an end each of the allies is perfectly free from any obligations and may consent or refuse to renew the treaty, as he shall think best. However, it must be confessed that if a sovereign, after having benefited almost alone by the treaty, were to refuse without just and important reasons to renew it, when he thinks he has no longer any need of it, and when he foresees that the time has come when his ally is to benefit in turn by it, his conduct would be dishonorable and unworthy of that generosity which is so becoming to sovereigns, and far removed from the sentiments of gratitude and affection which are due to an old and faithful ally. It happens but too often that great sovereigns, when at the height of their power, neglect those who have helped them to attain it.

§ 200. How a treaty is dissolved when violated by one of the contracting parties.

Treaties contain promises which are perfect in their nature and correlative. If one of the parties fails to carry out its part of the contract, the other State can force it to do so, for this is the right conferred by a perfect promise. But if there be no other way of forcing an allied State to keep its word than by recourse to arms, it is at times more expedient for the State to revoke its own promises and to break the treaty; and it is unquestionably justified in doing so, since its own promises were made only on condition that the other State would carry out on its part the stipulations of the treaty. Accordingly the State which is offended or injured by the failure of the other to carry out the treaty can choose either to force the offender to fulfill its promises or can declare the treaty dissolved because of the violation of its provisions. Prudence and wise policy will suggest what it is best to do under the circumstances.

§ 201. The violation of one treaty does not dissolve another.

But when the allied States have two or more different and independent treaties between them, the violation of one of the treaties does not thereupon release the injured party from the obligations which it has contracted in the others, for the promises contained in the latter do not depend upon those embodied in the violated treaty. But the injured State can threaten to revoke on its part all the other treaties between the two States and can carry out the threat if the other State persists in its conduct; for if any one takes or withholds from me my right, I may, in the state of nature, in order to force him to do me justice, to punish him, or to indemnify myself, deprive him in turn of some of his rights, or seize and hold them until full satisfaction has been made. And if recourse is had to arms to obtain satisfaction for the violation of the treaty, the injured party begins by withholding from the enemy all the rights which belonged to the latter by reason of the treaties between them; and we shall see, in speaking of war, that it can do so with justice.

§ 202. That the violation of one article of a treaty may nullify the whole treaty.

Certain authors(*a*) wish to extend what we have just said to those articles of a treaty which have no natural connection with the article that has been violated, and they say that those separate articles should be regarded as so many distinct treaties concluded all at one time. Hence they maintain that if one of the allied States violates a single article of the treaty the other State is not thereupon justified in annulling the entire treaty, but that it can either refuse in turn to perform what it promised in view of the article violated or force the offending State to carry out its promises, if that can be done, and if not, to make good the loss; and they maintain that with this end in view the injured State may threaten to revoke the whole treaty, a threat which may be lawfully put into effect if it be disregarded. Such is unquestionably the conduct which prudence, moderation, the love of peace, and charity will ordinarily prescribe to Nations. Who is there who would deny it to be so, and madly assert that sovereigns may, upon the least subject of complaint, immediately have recourse to arms, or may at least break every treaty of friendship and alliance? But the question here is one of law and not of the proper action to be taken to obtain justice, and I hold that the principle upon which the above decision is based is absolutely untenable. The separate articles of the same treaty can not be regarded as so many distinct and independent treaties. Although it may be that no direct connection can be seen between the articles, they are all

---

(*a*) See Wolf, *Jus Gent.*, § 432.

bound together by this common relation, that each of the contracting parties agreed to certain articles less beneficial in view of others more so. I should never, perhaps, have agreed to this article had my ally not granted me another which has no relation of subject-matter to the first. All the articles taken as a whole have, consequently, the same force and character as a single mutual promise, unless certain articles are formally excepted. Grotius well observes that "each of the articles of a treaty has the force of a condition, the non-fulfillment of which renders the treaty void."(*a*) He adds, that "the clause is sometimes inserted that the violation of a single article is not to annul the whole treaty, in order that one of the contracting parties may not be able to free itself of its obligations upon the smallest provocation." The precaution is a wise one and fully in keeping with the care which Nations should have to maintain peace and to render their alliances stable.

§ 203. A treaty becomes void if one of the contracting parties ceases to exist.

Just as a personal treaty expires at the death of the King, a real treaty comes to an end if one of the allied Nations is destroyed; that is to say, not only if the men composing it should all happen to perish, but even if, for any cause whatever, the Nation should lose its character as an independent political society. Thus, when a State is overthrown and its people scattered, or when it is subjugated by a conqueror, all its alliances and its treaties come to an end concurrently with the fall of the public authority that contracted them. But we must not confound those treaties or alliances which, since they impose the obligation of repeated acts on both sides, can not remain in force except through the continued existence of the contracting powers, with those contracts by which a right is once for all acquired, independently of any subsequent acts of either party. If, for example, a Nation has granted in perpetuity to a neighboring prince the right to fish in a river or to keep a garrison in one of its fortresses, the prince does not lose his rights even though the Nation from which he has received them should happen to be conquered by, or in any other way subjected to the control of, a foreign power. His rights do not depend upon the continued existence of the State from which he received them; for the latter alienated them, and its conqueror could only take over what it actually possessed. In like manner national debts, or debts for which a sovereign has mortgaged one of his towns or his provinces, are not canceled by conquest. The King of Prussia, in acquiring Silesia by a conquest which was confirmed by the Treaty of Breslau, took upon himself the debts for which that province was mortgaged to certain English merchants. In fact, his conquest could only embrace the rights of the House of Austria, and he could only take Silesia such as it was at the moment of his conquest, with its rights and its obligations. A refusal by a conqueror to pay the debts of a country which he has subjugated would amount to defrauding the creditors, with whom he is not at war.

§ 204. Alliances of a state which has passed under the protection of another.

Since a Nation or a State of whatever kind can not enter into a treaty contrary to those already binding upon it (§ 165), it can not put itself under the protection of another State, except on condition that all its existing alliances and treaties remain unaffected thereby; for the agreement by which a State puts itself under the protection of another sovereign is a treaty (§ 175); if it enters into it freely it should frame its terms so that they will not conflict with those of existing treaties. We have seen (§ 176) what rights are conferred upon it in a case of necessity by the duty of self-preservation.

The alliances of a Nation are, therefore, not annulled when it puts itself under the protection of another State unless they are incompatible with the terms upon

---

(*a*) *De Jure Belli et Pacis*, Lib. II, Cap. XV, § 15.

which the protection is obtained; its obligations towards its former allies continue in force, and its allies remain in turn bound by their promises to it, so long as it has not deprived itself of the power of fulfilling its promises to them.

When a Nation is forced by necessity to put itself under the protection of a foreign power and to promise the latter the assistance of its whole resources against all opponents, not excepting its allies, its former alliances continue in force as far as they are not incompatible with the new treaty of protection. But if it should happen that a former ally enters upon a war with the protector, the protected State will be obliged to side with the latter, to which it is bound by closer ties and by a treaty which takes precedence of all others in case of conflict between them. Thus the Nepesines, having been forced to surrender to the Etrurians, considered themselves bound thereafter rather to stand by their treaty of submission than by the alliance which they had with the Romans: *postquam deditionis, quam societatis, fides sanctior erat,* says Livy.(*a*)

§ 205. Treaties dissolved by mutual consent.

Finally, as treaties are entered into by the common consent of the parties, they may be dissolved as well by the mutual agreement and free consent of the contracting parties. And even though a third State should be interested in the maintenance of the treaty, and should suffer by its dissolution, if the State has had no part in it and can allege no direct promises in its own favor, the two States whose mutual agreements have thus turned to the advantage of a third State, can mutually release each other from them without consulting the third State, or giving it a justifiable cause for opposing their action. Two monarchs mutually agree to join their forces for the defense of a neighboring town; the town is benefited by their assistance, but it acquires no right to that assistance, and as soon as the two monarchs wish to release each other from the agreement the town will be deprived of their help without having any cause for complaint, since no promises had been made to it.

(*a*) Lib. vi, Cap. x.

CHAPTER XIV.

Other Public Conventions; Conventions Concluded by Subordinate Officials; in Particular the Agreement which in Latin is Called "Sponsio"; Agreements Between the Sovereign and Private Individuals.

§ 206. Conventions entered into between sovereigns.

The public compacts called conventions, agreements, etc., when they are entered into between sovereigns, differ from treaties only in the subjects with which they deal (§ 153). All that we have said of the validity of treaties, of their execution, their dissolution, the obligations and the rights they give rise to, etc., is applicable to the various conventions which sovereigns may conclude with one another. Treaties, conventions, agreements, are all public contracts and are all governed by the same law and the same principles. We shall not weary the reader with a repetition of what has already been said, and it would be useless to enter into details of the various kinds of conventions, which are all of the same nature and which only differ from one another in their subject-matter.

§ 207. Those entered into by subordinate officials.

But there are public conventions which are entered into by subordinate officials in virtue either of an express order from the sovereign or of the power given them by the terms of their commission, according as the nature of the business intrusted to them may admit or require.

Inferior or *subordinate* officials are those public officers who exercise some of the powers of sovereignty in the name and under the authority of the sovereign. Such are magistrates who are appointed for the administration of justice, generals of the army, and ministers of State.

When these persons, possessing the powers of the sovereign and acting under his express orders in the specific case, enter into a convention, the convention is concluded in the name of the sovereign himself, who contracts through the agency of his representative or commissioner. The case was referred to in § 156.

But public officials, in virtue of their office, or of the commission which is given them, have also themselves the power to enter into conventions on public affairs, exercising on such occasions the power and authority of the sovereign who appointed them. They may obtain this power in two ways: either it is conferred upon them in express terms by the sovereign, or it follows naturally from their commission itself, the nature of the business intrusted to them requiring that they have the power to conclude such conventions; and this is particularly true in cases where they can not await the orders of the sovereign. Thus, the governor of a town and the general who is laying siege to it have the authority to settle upon the terms of capitulation. Whatever they thus agree upon within the scope of their authority is binding upon the State or upon the sovereign who has given them their commission. As conventions of this kind take place principally in time of war we shall treat of them more at length in Book III.

§ 208. Treaties made by public officials, when not acting under orders nor possessing sufficient powers.

If a public official, an ambassador, or a general of the army concludes a treaty or a convention without orders from the sovereign, or without being authorized to do so by the powers belonging to his office, or in excess of the rights conferred by his commission, the treaty is null and void, as being made without sufficient power (§ 157); it can only become binding by the ratification of the sovereign, either expressly or tacitly given. Express ratification is an act by which the sovereign gives his approval to a treaty and binds himself to observe it. Tacit ratification is implied from certain steps which it is justly presumed the sovereign would only have taken in virtue of the treaty and which he could not have taken had he not considered it as definitely concluded. Thus, after a treaty of peace has been signed by officers of State, who may even have exceeded the orders of their sovereigns, if one of the sovereigns transports his troops on a friendly footing across the territory of his reconciled enemy he impliedly ratifies the treaty of peace. But if the terms of the treaty call for the ratification of the sovereign it is understood that express ratification is required, and consequently only an express ratification can give the treaty its full force.

§ 209. The agreement called sponsio.

The Latin term *sponsio* is applied to an agreement concerning affairs of state entered into by a public official in excess of the authority conferred by his commission and without the order or sanction of the sovereign. One who treats for the State in this manner promises, naturally, to endeavor to bring about the ratification and acceptance of his act by the State or the sovereign; otherwise his agreement would be to no effect. The agreement can only be justified, on either side, by the hope of its being ratified.

Examples of such agreements can be found in Roman history. Let us examine the best-known of them—the one which has been discussed by the most celebrated writers, that of the Caudine Forks. The consuls, T. Veturius Calvinus and Sp. Postumius, seeing that the Roman army under their command was caught in the defile of the Caudine Forks without hope of escape, made a disgraceful agreement with the Samnites, notifying them, however, that they could not conclude a real public treaty (*fœdus*) without orders from the Roman people, without the fetials, and without the customary ceremonies. The Samnite general was satisfied with exacting a promise from the consuls and the chief officers of the army and with making them give him six hundred hostages. He made the Roman soldiers lay down their arms and pass under the yoke, after which he dismissed them. The Senate was unwilling to accept the treaty and delivered up to the Samnites those who had concluded it. The Samnites refused to receive them, but Rome considered itself free from all obligations and its conduct beyond reproach.(*a*) Authors vary in their opinion of Rome's conduct. Some maintain that if Rome did not wish to ratify the treaty it should have put things in the condition in which they were before the agreement and should have sent back the entire army to its camp at the Caudine Forks; this, indeed, was what the Samnites demanded. I confess that I am not entirely satisfied with the way in which the question has been argued out on either side, even by those authors whose authority I acknowledge on other points. Let us profit by their reasoning and endeavor to throw new light upon the subject.

§ 210. The state is not bound by agreements of this kind.

Two questions are presented: (1) What are the obligations of the person (sponsor) who has made the agreement, if his State disavows it? (2) What are the obligations of the State itself? But first of all we must note with Grotius(*b*) that the State is not bound by an agreement of that character. That is clear from the very definition of the agreement called *sponsio*. The State has not ordered it to be made and has in no way authorized it, neither expressly by a direct command or by a grant of full powers nor impliedly as a necessary or natural consequence of the authority conferred upon the person (sponsor) who makes the agreement. The general of an army has, indeed, in virtue of his office, the power to conclude private conventions as the occasion for them arises, and he may thus enter into

---

(*a*) Livy, Lib. IX, at the beginning.

(*b*) *De Jure Belli et Pacis*, Lib. II, Cap. XV, § 16.

agreements relative to himself, to his army, and to incidents of war; but he has not the power to conclude a treaty of peace. He can bind himself and the army under his command on all occasions when the duties of his office require that he should have the power of treating; but he can not bind the State beyond the terms of his commission.

§ 211. Obligations of one who makes them, if they are disavowed by the state.

Let us now see what are the obligations of the person (sponsor) who makes the agreement when the State disavows it. We can not apply here the principles of the natural law which hold good between individuals, for the nature of the interests involved and the position of the contracting parties necessarily creates a difference between the two cases. It is certain that, as between individuals, he who without authorization makes a simple and unqualified promise that a certain act will be performed by another is bound, if the other disavows the agreement, to perform himself what he has promised, or to give an equivalent, or to restore things to their former condition, or, finally, to compensate fully the person with whom he has made the agreement, according to the circumstances of the case: his promise (*sponsio*) can not be otherwise interpreted. But the rule does not hold in the case of a public official who, without power or authorization, promises that an act will be performed by his sovereign. Matters are at stake which are infinitely beyond the power of the promisor to dispose of, things which he can not carry out himself or cause to be carried out, and for which he can offer neither an equivalent nor adequate compensation; he is not able to give the enemy what he has promised without authorization, and, finally, it is no longer in his power to completely restore things to their former condition. The promisee can hope for nothing of the kind. If the promisor has deceived him by saying that he was sufficiently authorized, the promisee has the right to punish him. But if, as in the case of the Roman consuls at the Caudine Forks, the promisor has acted in good faith by notifying that he has not the power to bind his State by a treaty, nothing else can be presumed, except that the other party was willing to run the risk of concluding a treaty which would become void if not ratified, hoping that a regard on the part of the sovereign for the one who had drawn up the treaty and for the hostages, if any were required, would lead him to ratifiy the agreement. If the event deceives his hopes he can only blame his own imprudence. An eager desire to obtain peace on advantageous conditions and the temptation of some present gain could alone have led him to make so precarious an agreement. This was sensibly observed by the Consul Postumius himself, on his return to Rome. Livy makes him speak as follows in the Senate: "Your generals," he said, "and those of the enemy were both equally thoughtless: we by incautiously exposing ourselves to danger, they in allowing victory to escape them when the nature of the ground secured it to them, still distrusting their advantages and hastening, at whatever cost, to disarm men who were always to be feared so long as they held their arms in their hands. Why did they not keep us prisoners in our camp? Why did they not send to Rome, to obtain from the Senate and the people a treaty of peace on which they could rely?"

It is clear that the Samnites were satisfied with the hope that the promises made by the consuls and the chief officers and the desire of saving the six hundred soldiers left as hostages would induce the Romans to ratify the agreement; moreover, they considered that, in any event, they would always have the six hundred hostages, together with the arms of the soldiers and the baggage of the army, and in addition the glory, empty, or rather disastrous as it proved to be, of having made the Romans pass under the yoke.

What, then, were the obligations of the consuls and the others (*sponsores*) who concluded the unauthorized treaty? They themselves thought that they should be delivered to the Samnites. This does not follow naturally from the agreement (*sponsio*), and from the remarks we have just made it does not appear that the promisor, in agreeing to things which the promisee knew well were not within his control, is bound, when his act is disavowed, to deliver himself up by way of compensation. But as he could expressly agree to do so, that being within the extent of his powers or of his commission, the custom of those times undoubtedly considered it as an implied clause of the agreement called *sponsio*, since the Romans delivered up all *sponsores;* it was a rule of their *fetial law.*(*a*)

If the *sponsor* has not expressly agreed to deliver himself up, and if the received custom does not impose that obligation upon him, it would seem that all that his word obliges him to do is to take in good faith every lawful step to induce his sovereign to ratify what he has promised, and there is no doubt that this is his duty if the treaty be at all just, advantageous to the State, or endurable in consideration of the evils from which it has saved the State. But to propose to spare the State a considerable loss by means of a treaty which the maker intends to advise the sovereign not to ratify, not because the terms are too severe, but because advantage can be taken of the fact that it was concluded without authorization, would unquestionably be a fraudulent proceeding and a shameful abuse of the faith of treaties. But what is the general to do who, in order to save his army, has been forced to conclude a treaty which is harmful or disgraceful to the State? Is he to advise the sovereign to ratify it? He will content himself with setting forth the reasons for his conduct, the necessity which forced him to make the treaty; he will point out, as did Postumius, that he alone is bound, and that he is willing to have his act disavowed and to be himself delivered up for the public good. If the enemy lose thereby it is through their own folly. Was the general bound to point out to them that in all probability his agreement would not be ratified? That would be asking too much. It is enough if he does not impose upon them by claiming powers more extended than he actually possesses and if he does no more than profit by their proposals, without inducing them to conclude the treaty by holding out false hopes. It is for the enemy to take all the precautions; if they neglect them, why may not the general profit by their carelessness as by a piece of good fortune? "It was fortune," said Postumius, "which saved our army after having exposed it to danger. Success turned the heads of the enemy, and their advantages have proved to be no more than a beautiful dream."

If the Samnites had only exacted of the Roman generals and army such terms as the latter had it in their power to make from the very nature of their position and of their functions, if the Samnites had forced the Romans to give themselves up as prisoners of war, or if they had been unable to hold them all prisoners and had sent them away on their parole not to bear arms against the Samnites for a certain number of years in case Rome should refuse to ratify the treaty of peace, the agreement would have been valid as having been made with sufficient powers, and the entire army would have been bound to observe it; for it is absolutely necessary that the troops, or their officers, should be able to make agreements of that character under such circumstances. This is what happens in capitulations, of which we shall speak in treating of war.

If a public official has made a just and honorable agreement upon a subject which is of such a nature that the official can compensate the other party in case

---

(*a*) I have already said in the Preface that the fetial law of the Romans was their law of war. The college of *fetials* was consulted on the reasons which might justify the State in going to war and on the questions which war gave rise to; it had also the duty of performing the ceremonies attending the declaration of war and the treaty of peace. The fetials were also consulted, and their services made use of, in all public treaties.

the agreement is disavowed, it is presumed that he binds himself to make such compensation, and he must stand by his word, as Fabius Maximus did in the example mentioned by Grotius.(*a*) But under certain circumstances the sovereign might forbid him to give anything to the enemies of the State by carrying out his promise.

§ 212. Obligations of the sovereign.

We have shown that a State can not be bound by an agreement entered into without its command or authorization. But has it no obligations at all? This point still remains to be considered. If the situation continues unchanged by the agreement the State or the sovereign can simply disavow the treaty, which thus becomes inoperative and of no more effect than if it had not been concluded. But the sovereign must make known his decision as soon as the fact of the treaty comes to his knowledge; not that his silence can, indeed, give force to a treaty which is invalid without his approval, but because it would be an act of bad faith for him to allow the other State time to fulfill its part of an agreement, which the sovereign, on his own side, does not intend to ratify.

If the State which has treated with the *sponsor* has already done something in virtue of the agreement, or has fulfilled on its part the stipulations, in whole or in part, must it be compensated, or must things be restored to their original condition when the treaty is disavowed? Or is the sovereign to be allowed to refuse to ratify it and at the same time reap the advantages of it? We must distinguish here the character of the things that have been performed and that of the advantages that have accrued to the State. One who treats with a public official not possessed of sufficient powers, and who carries out the agreement on his part without waiting for the ratification, is guilty of a signal lack of prudence, into which he has not been led by the State with which he thinks he has contracted. If he has given up any of his property the other party can not profit by his folly and retain it. Thus when a State, thinking that it has concluded peace with the general of the enemy, has in consequence delivered up one of its strongholds or paid over a sum of money, the sovereign of that general must undoubtedly restore what has been given up if he does not wish to ratify the agreement. To act otherwise would be to seek to enrich himself with the property of another and to retain it without title.

But if the agreement has given nothing to the State which it did not already possess; if, as in the agreement of the Caudine Forks, the whole advantage consists in its having rescued the State from danger and saved it from loss, this is a gift of fortune, by which the State may profit without scruple. Who would refuse to be saved by the folly of his enemy? And who would think himself bound to indemnify the enemy State for an advantage it has lost when it has not been induced to give it up by fraud? The Samnites claimed that if the Romans were unwilling to accept the treaty made by their consuls they should have sent back the army to the Caudine Forks and restored the original situation; two tribunes who had been among the number of the *sponsores*, in order to avoid being delivered up, dared to maintain the same principle, and certain authors have agreed with them. What! the Samnites seek to take advantage of circumstances in order to dictate to the Romans and draw from them a disgraceful treaty; they are imprudent enough to treat with the consuls, who declare themselves unauthorized to contract for the State; they allow the Roman army to escape after having covered it with shame;

(*a*) Lib. II, Cap. xv, § 16, at the end. Fabius Maximus, having made with the enemy an agreement which the Senate disapproved of, sold a tract of land, for which he received two hundred thousand sesterces, in order to carry out his word. The affair concerned the ransom of prisoners. (Aurel. Victor., *De Viris Illustr.* Plutarch's Life of Fabius Maximus.)

and the Romans are not to profit by the mistakes of an enemy having so little generosity! The Romans must either ratify a disgraceful treaty or must restore to the enemy the advantages which they possessed by reason of the situation of the battlefield and which they lost through their own fault! On what principles can such a decision be founded? Did Rome promise anything to the Samnites? Did it agree with them that the army should go free, in anticipation of the ratification of the agreement made by the consuls? If it had received anything in virtue of the agreement it would have been obliged to restore it, as we have said, since it would have no title to it on declaring the treaty void. But it had no part in the grievous blunder of its enemies and it justly profited by that blunder, just as one profits in war by all the mistakes of an unskillful general. Suppose that a conqueror, after making a treaty with diplomatic agents, who state expressly that it is subject to the ratification of their master, should be imprudent enough to abandon all his conquests without waiting for the ratification; does justice require that the conqueror be invited back to take possession of them in case the treaty be not ratified?

I confess, however, and freely admit, that if the enemy have allowed an entire army to escape on the faith of an agreement concluded with the general as a simple *sponsor* without sufficient powers, I confess, I say, that if the enemy have acted generously and have not made use of their advantages to dictate disgraceful or too severe terms, justice requires that the State ratify the agreement or that it make a new treaty on just and reasonable terms, even yielding some of its claims, as far as the public welfare will permit; for the generosity and noble confidence even of an enemy should not be abused. Pufendorf(*a*) holds that the treaty of the Caudine Forks contained nothing too hard or unendurable. This author does not seem to make much account of the shame and disgrace which would have fallen upon the whole Republic. He did not see the lofty character of the policy pursued by the Romans, who would never consent, even in their greatest distress, to accept a disgraceful treaty, nor even to make peace with an acknowledgment of defeat—a sublime policy to which Rome owed all its greatness.

Let us observe in conclusion that if the subordinate official has concluded, without orders and without full powers, a fair and honorable treaty in order to rescue the State from imminent danger, the sovereign who, seeing himself thus delivered from harm, would refuse to ratify the treaty, not because he finds it disadvantageous, but merely in order to avoid paying the price of his deliverance, would certainly be acting contrary to every rule of honor and justice. This would be a case in which could be applied the principle "summum jus, summa injuria."

To the example which we have taken from Roman history let us add a famous instance from modern history. The Swiss, having a quarrel with France, joined with the Emperor against Louis XII and invaded Burgundy in the year 1513. They laid siege to Dijon. La Trimouille, who commanded the town, fearing that he could not save it, came to terms with the Swiss, and, without waiting for a commission from the King, made an agreement in virtue of which the King of France was to renounce his claims upon the Duchy of Milan and to pay the Swiss, in fixed installments, the sum of 600,000 crowns; the Swiss, on their side, promised nothing further than to return home, so that they were free to attack France again if they thought it well to do so. They received hostages and departed. The King was greatly displeased with the treaty, although it had saved Dijon and preserved the Kingdom from very great danger, and he refused to ratify it.(*b*) It is certain

---

(*a*) *Jus Nat. et Gent.*, Lib. VIII, Cap. IX, § 12.

(*b*) Guicciardini, Book XII, Chap. II; de Watteville, *Hist. de la Confédér. Helvétique*, Part II, p. 185, and foll.

that La Trimouille exceeded his powers, especially in promising that the King would abandon his claims to the Duchy of Milan. Hence it is very likely that his whole purpose was to escape from his enemies, who could be more easily outwitted in negotiations than conquered in open combat. Louis was not bound to ratify and carry out a treaty concluded without orders and without full powers; and if the Swiss were deceived they had only their own imprudence to blame. But as it clearly appeared that La Trimouille had not acted towards them in good faith, since he had deceived them on the subject of the hostages by giving them persons of the lowest rank instead of four citizens of the highest rank, as he had promised them,(*a*) the Swiss would have been justified in refusing to make peace unless satisfaction were made for the act of perfidy, either by delivering up to them the author of it or in some other manner.

§ 213. Private contracts of a sovereign.

The promises, agreements, and all the private contracts of a sovereign are naturally subject to the same rules as are those of private individuals. If disputes arise with reference to them it is equally conformable to the position of the sovereign and to the loftiness of sentiment which should characterize him, and to a love for justice, to have them decided by the judicial tribunals of the State. This is the practice of all civilized States which are governed by established laws.

§ 214. Contracts made by the sovereign with private individuals in the name of the state.

The agreements and contracts which the sovereign makes with private individuals, in his character as sovereign and in the name of the State, follow the rules which we have given for public treaties. In fact, when a sovereign contracts with persons who are not subjects of the State, whether it be with a private individual, or with a Nation, or with a sovereign, the rights of the parties are the same in each case. If the private individual who contracts with a sovereign is a subject of the latter the rights of the parties are still the same, but there is a difference in the manner of deciding the controversies to which the contract may give rise. The individual, being a subject of the State, is obliged to submit his claims to its judicial tribunals. Some authors add that the sovereign can rescind such contracts if he finds them contrary to the public welfare. He unquestionably can; but that is not from any reason drawn from the peculiar nature of such contracts; the rescission must be based either upon the same reason which renders even a public treaty invalid, namely, that it is ruinous to the State and contrary to the public welfare, or upon the principle of *eminent domain*, which allows the sovereign to dispose of the property of the citizens in view of the common good. We are speaking here of an absolute sovereign. Recourse must be had to the constitution of each State to discover who are the persons authorized to contract in the name of the State, to exercise the functions of sovereignty, and to decide upon what the public welfare requires.

§ 215. They bind the nation and succeeding sovereigns.

When a person duly authorized contracts in the name of the State his act binds the Nation itself and consequently all future rulers of the social body. Hence, when a prince has the power to contract in the name of the State, he binds all of his successors, and they in their turn are not less bound than he to fulfill his contracts.

§ 216. Debts of the sovereign and of the state.

The ruler of a Nation may have private debts arising from his own personal affairs; his private property is alone liable for debts of this kind. But loans made for the needs of the State, debts incurred in the administration of public affairs, are strictly legal contracts and are binding upon the State and the whole Nation. Nothing can release the Nation from the obligation of discharging such debts. As soon as they are contracted for by the lawful authority the rights of the creditor

---

(*a*) Guicciardini, Book XII, chap. II; de Watteville, *Hist. de la Confédér. Helvétique*, Part II, p. 190.

are indefeasible. Whether the loan has turned to the profit of the State or has been wasted in foolish expenditures is no concern of the lender. He has intrusted his property to the Nation; the Nation must return it to him. So much the worse for the Nation if it has confided the care of its affairs into improper hands.

However, this principle has its limits drawn by the very nature of such loans. The sovereign has in general only the power to bind the State by debts contracted for the welfare of the Nation, to enable him to provide for contingencies; and if his authority is absolute it is for him to decide, in all cases open to doubt, what the welfare and safety of the State requires. But if he were, without necessity, to contract enormous debts capable of ruining the Nation forever, there could not be any doubt that he would be acting manifestly without authority, and those who should lend him money would misplace their confidence. No one can suppose that a Nation would willingly allow itself to be absolutely ruined by the caprice and foolish entravagance of its ruler.

As national debts can only be paid by the income of taxes and assessments, the ruler or sovereign who has not been given the power to impose taxes and assessments—in a word, to raise funds on his own authority—has likewise not the power to create State debts for which the Nation will be liable. Thus, the King of England, who has the power to declare war and to make peace, can not contract a national debt without the consent of Parliament, since without its consent he can not impose any tax upon the people.

§ 217. Grants made by the sovereign.

Grants made by the sovereign do not come under the same rule as his debts. When a sovereign has borrowed money without necessity, or for an unreasonable object, that circumstance does not alter the fact that the creditor has intrusted his property to the State; and it is just that the State should return it if the creditor has had reason to think that his loan was made to the State. But when the sovereign gives away the property of the State, some portion of its lands, or a fief of considerable size, he is only empowered to do so in view of the public welfare, as a return for services rendered to the State or for some other reasonable object in which the Nation has an interest; if he makes the grant without good reason or lawful cause his act is unauthorized. His successor, or the State, can at any time revoke the grant, and the revocation will be no wrong to the grantee, since he has given no consideration for it. The above remarks apply to every sovereign to whom the law does not expressly give the free and absolute disposal of the property of the State—a power so dangerous that its existence is never to be presumed.

The immunities and privileges conferred by the sovereign out of pure liberality are species of grants and may in like manner be revoked, especially if they prove detrimental to the State. But a sovereign can not revoke them on his own authority if his power is not absolute; and even if it is he should only exercise it with moderation and with an equal sense of prudence and justice. Immunities granted for a consideration, or in anticipation of some return, partake of the character of obligatory contracts and can only be revoked in case of abuse or when they become injurious to the welfare of the State; and if on this account they be suppressed, compensation should be made to those who have enjoyed them.

CHAPTER XV.

The Faith of Treaties.

§ 218. Things sacred among nations. Although we have sufficiently set forth (§§ 163, 164) the necessity and the indispensable obligation of keeping one's word and of observing treaties, the subject is so important that we can not refrain from considering it here in a more general aspect, as of concern not only to the contracting parties but also to all Nations as members of the universal society of mankind.

Whatever is required to be kept inviolable in view of the public safety is *sacred* in society. Thus, the person of the sovereign is sacred because the safety of the State requires that his person be in perfect security, beyond the reach of violence. Thus, the Romans declared the person of their tribunes to be sacred, regarding it as essential to their safety to secure their defenders from violence and to spare them even the fear of it. Accordingly, whatever is required to be kept inviolable, in view of the common safety of all peoples and of the peace and security of the human race, is a thing to be held sacred by Nations.

§ 219. Treaties are to be held sacred by nations. Who can doubt that treaties are among the number of the things to be held sacred by Nations? They settle the most important questions; they adjust the claims of sovereigns; they enforce the recognition of a Nation's rights and secure its most precious interests. As between political bodies, between sovereigns, who acknowledge no superior on earth, treaties are the sole means of adjusting conflicting claims, of regulating their mutual conduct, of making definite what they can expect from one another, and how matters stand between them. But treaties are no more than empty words if Nations do not regard them as solemn promises, as rules which are to be inviolably observed by sovereigns and to be held sacred throughout the whole world.

§ 120. The faith of treaties is to be regarded as a sacred thing. The faith of treaties, that firm and sincere determination, that invariable steadfastness in carrying out our promises, of which we make profession in a treaty, is therefore to be held sacred and inviolate by Nations whose safety and peace it secures; and if States do not wish to be lacking in their duty to themselves they should brand with infamy whoever violates his word.

§ 221. He who violates his treaties violates the law of nations. He who violates his treaties violates at the same time the Law of Nations, for he shows contempt for that fidelity to treaties which the Law of Nations declares sacred, and, as far as is in his power, he renders it of no effect. He is doubly guilty, in that he does an injury both to his ally and to all Nations and the human race as well. "On the observance and fulfillment of treaties," said a sovereign whose opinion is worthy of respect, "depends the mutual security of princes and States, and no dependence could be placed upon future agreements, if past ones were not observed."(*a*)

§ 222. The right which nations have against one who holds the binding force of treaties in contempt. As all Nations have an interest in maintaining the faithful observance of treaties and in causing them to be everywhere regarded as sacred and inviolable, they have likewise the right to unite together to check a Nation which shows a contempt for them, which openly makes sport of them, which violates them and treads them under foot. Such a Nation is a public enemy which attacks the foundations of the common peace and security of Nations. But care must be taken not to extend this principle so as to impair the liberty and independence which belong to all Nations. When a sovereign breaks his treaties and refuses to fulfill them the conclusion is not to be at once drawn that he looks upon them as

---

(*a*) Resolution of the States-General, of March 16, 1726, in answer to the memorial of the Marquis de St. Philippe, ambassador of Spain.

having no real significance and that he despises their binding force. He may have good reasons for believing himself released from his promises, and other sovereigns are not authorized to pass judgment upon him. It is the sovereign who fails to keep his promises on clearly trivial grounds, or who does not even take the trouble to offer reasons, or to disguise his conduct and cover up his bad faith—it is he who deserves to be treated as an enemy of the human race.

§ 223. Violations by the popes of the law of nations.

In treating of the subject of religion in the first Book of this work, we could not refrain from mentioning several cases of the flagrant abuse which in former times the Popes made of their authority. There was one abuse in particular which was equally injurious to all States and was subversive of the Law of Nations. Several Popes undertook to break the treaties of sovereigns; they presumed to release a sovereign from his agreements and to absolve him from the oaths by which he had confirmed them. Cesarini, legate of Pope Eugenius IV, desiring to break the treaty which Uladislas, King of Poland and Hungary, had made with the Sultan Amurath, in the name of the Pope, pronounced the King absolved from his oaths.(*a*) In those times of ignorance people thought that treaties were binding only because of the oath accompanying them, and the Pope was believed to have the power of dispensing from the observance of oaths of every kind. Uladislas renewed war upon the Turks, but that prince, in other respects worthy of a better fate, paid dearly for his perfidy, or rather for his superstitious obedience; he perished with his army near Varna, and his death, thus brought on by his spiritual head, was a grievous loss to Christendom. The following epitaph was composed on Uladislas:

Romulidæ Cannas, ego Varnam clade notavi.
Discite, mortales, non temerare fidem.
Me nisi Pontifices jussissent rumpere fœdus,
Non ferret Scythicum Pannonis ora jugum.

Pope John XXII declared null the oaths which the Emperor Louis of Bavaria and his rival Frederic of Austria had mutually taken when the Emperor set the latter at liberty. When Philip, Duke of Burgundy, broke off his alliance with the English he had himself absolved from his oath by the Pope and the Council of Basle; and at a period when the revival of learning and the Reformation should have made the Popes more circumspect, the Legate Caraffa, in order to persuade Henry II, King of France, to renew the war, presumed to absolve him, in 1556, from the oath he had taken to observe the truce of Vaucelles.(*b*) The famous Peace of Westphalia displeased the Pope for many reasons, and he did not content himself with protesting against a treaty in which the interests of all Europe were involved, but published a bull in which "from his certain knowledge and full ecclesiastical power" he declared certain articles of the treaty "null, void, invalid, evil, unjust, condemned, reprobated, worthless, of no force or effect; and that no one is bound to observe all or any of them, even though they were confirmed by oath . . . ." That is not all; the Pope assumes the tone of absolute master and continues thus: "And nevertheless, for greater precaution, and as far as there is need, from the same motives, knowledge, consideration, and fulness of power, we condemn, reprobate, break, annul, and deprive of all force and effect the said articles, and all other things prejudicial to the above . . . ."(*c*) Who does not see that these usurpa-

---

(*a*) History of Poland, by the Chevalier de Solignac, Vol. IV, p. 112. He quotes Dlugoss, Neugebauer, Sarnicki, Herburt. de Fulstin, etc.

(*b*) On these facts see the historians of France and Germany.

(*c*) Histoire du Traité de Westphalie, by P. Bougeant, in 12 mo., Tom. VI, pp. 413, 414.

tions of authority by the Popes, which were formerly very frequent, were violations of the Law of Nations and directly tended to destroy all the bonds which could unite Nations, to undermine the foundations of their peace, or to constitute the Pope the sole arbiter of their affairs.

§ 224. This abuse authorized by princes.

But who is not indignant at seeing this striking abuse authorized by princes themselves! In the year 1371, in the treaty concluded at Vincennes between Charles V, King of France, and Robert Stuart, King of Scotland, it was agreed "that the Pope should release the Scots from any oaths they may have made in swearing to the truce with the English, and that he should promise never to release the French and the Scots from the oaths which they were about to make in swearing to the new treaty."(*a*)

§ 225. Use of oaths in treaties. They do not constitute the obligation of treaties.

The generally accepted custom of former times of swearing to the observance of treaties furnished the Popes a pretext for assuming the power of breaking treaties by releasing the contracting parties from their oaths. But at the present day the merest child knows that the oath accompanying a promise or a treaty does not constitute the obligation to keep it; the oath merely lends a new force to the obligation, by calling God to witness. A rational and honest man thinks himself not less bound by giving his mere word, by pledging his faith, than if he had added to it the sanctity of an oath. Cicero refused to admit any great difference between a perjurer and a liar. "He who is in the habit of lying will easily come to perjure himself. For if a man can be persuaded to lie, will it be difficult to induce him to commit perjury? for having once departed from the truth, he is soon led into perjury with no more scruple than into lying. For who will be restrained by his oath to the gods when he is uninfluenced by the voice of conscience? Hence the gods have appointed the same punishment to the liar as to the perjurer; for it is not because of the actual words in which the oath is framed, but because of the perfidy and malice by which the other party is deceived that the anger and indignation of the gods are aroused."(*b*)

Hence the oath produces no new obligation; it merely confirms the obligation imposed by the treaty and is dependent upon that obligation for whatever force it possesses; where the treaty is already valid and binding the oath is so likewise; where the treaty is null and void the oath is of no effect.

§ 226. An oath in confirmation of a treaty does not change its nature.

The oath is a personal act; it has only reference to the person of him who takes it, whether he takes the oath himself or authorizes another to do so in his name. Nevertheless, as the oath gives rise to no obligation it in no way changes the nature of the treaty. Thus, an alliance confirmed by oath is so confirmed only with respect to him who has taken the oath; but if the alliance is *real* in character it continues in force after the death of the maker and passes to his successors as an alliance not confirmed by oath.

§ 227. It gives no preference to one treaty over others.

For the same reason, since the oath can not impose any further obligation than that resulting from the treaty itself, it gives no preference to one treaty to the prejudice of others not confirmed by oath; and since, where two treaties are in conflict with each other, the earlier alliance must be preferred to the later one (§ 167), the above rule must be observed even when the later treaty has been con-

---

(*a*) Choisy, Histoire de Charles V, pp. 282, 283.

(*b*) At quid interest inter perjurem et mendacem? Qui mentiri solet, pejerare consuevit. Quem ego, ut mentiatur, inducere possum, ut pejeret exorare facile potero: nam qui semel a veritate deflexit, hic non majore religione ad perjurium quam ad mendacium perduci consuevit. Quis enim deprecatione deorum, non conscientiæ fide, commovetur? Propterea, quæ pœna ab diis immortalibus perjuro, hæc eadem mendaci constituta est. Non enim ex pactione verborum quibus jusjurandum comprehenditur, sed ex perfidia et malitia per quam insidiæ tenduntur alicui, dii immortales hominibus irasci et succensere consuerunt. (Cicero, Orat. pro Q. Roscio Comœdo.)

firmed by oath. Moreover, as it is not permissible to conclude treaties contrary to those already in existence (§ 165), to confirm such treaties by oath would be no justification of them and would not make them supersede the earlier treaties in conflict with them; for this would be an easy way of freeing oneself from one's contracts.

§ 228. It can not give force to an invalid treaty.

In like manner an oath can not render valid a treaty which of itself is invalid, nor justify a treaty in itself unjust, nor oblige a State to carry out a treaty, lawfully concluded, but which in a given case could not be lawfully observed, when, for example, the ally to whom the State has promised help undertakes a manifestly unjust war. Finally, since every treaty concluded for an unlawful purpose (§ 161), every treaty disastrous in its consequences to the State (§ 160), or contrary to the fundamental laws (Book I, § 265), is essentially null and void, the oath which may have accompanied a treaty of such nature is likewise null and void and falls with the treaty which it was meant to confirm.

§ 229. Affirmations.

The affirmations made use of in concluding agreements are certain forms of expressions destined to give greater force to promises. Thus, kings promise *sacredly, in good faith, solemnly, irrevocably,* they pledge their *royal word,* etc. A man of honor thinks himself sufficiently bound by his word alone. Nevertheless, these affirmations are not useless; they serve to show that the agreement was made deliberately and with a realization of the act. The result is that they render a violation of the agreement more disgraceful. When men show so little fidelity to their promises advantage must be taken of every opportunity; and since shame is more effective with them than the sense of duty, it would be unwise to neglect that motive.

§ 230. Differences of religious belief do not affect the binding force of treaties.

After what we have said in an earlier chapter (§ 162) we can dispense with the need of proving that the faithful observance of treaties has no relation to differences of religious belief and is not in any way affected by them. The outrageous principle that *no faith is to be kept with heretics* might have had some acceptance formerly, owing to superstition and the conflict of religious sects; in these days it is generally repudiated.

§ 231. Precautions to be taken in the drawing up of treaties.

If in stipulating for something in our favor we are led, for the sake of security, to require precision, definiteness, and the greatest clearness in the terms of the agreement, on the other hand, good faith demands that we word our own promises clearly and unequivocally. We wantonly trifle with the principle of fidelity to treaties when we seek to draw them up in vague or equivocal terms, to insert ambiguous expressions in them, to look for opportunities of quibbling, to outwit those with whom we are dealing, and outdo them in cunning and duplicity. Let one who is skilled in these devices boast of his opportune talents and think himself an able diplomat; judged by reason and the sacred Law of Nature, he is classed as far below a common cheat as the dignity of Kingship is exalted above the station of private life. True diplomatic skill consists in guarding against deception, not in practising it.

§ 232. Subterfuges in treaties.

The use of subterfuges in a treaty is not less contrary to good faith. Ferdinand the Catholic, having made a treaty with the Archduke his son-in-law, thought that he could get out of it by secretly protesting against the treaty—a childish artifice, which, without giving him any rights, only manifested his weakness and bad faith.

§ 233. How a clearly false interpretation of a treaty is contrary to good faith.

The rules for the lawful interpretation of treaties are of sufficient importance to form the subject of a separate chapter. Let us merely remark here that a clearly false interpretation of a treaty is as contrary to good faith as anything could be imagined to be. He who is guilty of the act either wantonly trifles with the sacred faith of treaties or gives sufficient evidence that he is not ignorant of how shameful it is to be wanting in that faith; he would seek to play a dishonest part and yet preserve the reputation of an honorable man; he is a hypocrite who adds to his crime by the practice of detestable duplicity. Grotius relates several cases of a clearly false interpretation:(*a*) The Plateans, having promised the Thebans to restore the Theban prisoners, did so after having put them to death. Pericles promised to spare the lives of all the enemy who would *lay down their steel* (i. e., their weapons); he put to death all those who had steel clasps to their cloaks. A Roman general,(*b*) having agreed with Antiochus to give him back half his ships, had them all sawed in two. All these constructions are as fraudulent as that of Rhadamistus, who, according to the account given by Tacitus,(*c*) swore to Mithridates that he would use neither steel nor poison against him, and then had him smothered under a heap of clothes.

§ 234. Faith tacitly pledged.

We may pledge our faith tacitly, as well as expressly; the mere giving our word constitutes the obligation, and the manner in which it is given does not affect the obligation. Faith is tacitly pledged when it is based upon an implied consent; and consent is implied when it may reasonably be inferred from our actions. Thus, as Grotius observes,(*d*) whatever is implied in the nature of certain acts which are agreed upon is *tacitly* included in the agreement; or, in other words, whatever is essential to the fulfillment of the agreement is tacitly granted. If, for example, a promise of safe return is made to the enemy when their army is far within the other's territory, it is evident that provisions can not be refused them, since their return can not be otherwise effected. In like manner, in requesting or accepting an interview, full security is tacitly promised. Livy says with good reason that the Galatians violated the Law of Nations in attacking the Consul Manlius when he was on his way to the place at which they had invited him to hold an interview.(*e*) The Emperor Valerian, having been defeated in battle by Sapor, King of Persia, asked for terms of peace. Sapor answered that he wished to treat with the Emperor in person, and when Valerian accepted the interview without suspicion he was seized by his perfidious enemy, who kept him prisoner till his death and treated him with the utmost cruelty.(*f*)

Grotius, in treating of tacit agreements, speaks of those in which the compact is entered into by *mute signs*.(*g*) But the latter must be distinguished from the former. Consent which is sufficiently made known by a sign is just as *express* as if it had been given by word of mouth. Words themselves are nothing more than accepted signs. There are mute signs which received custom renders as clear and express as words. Thus, in these days, by displaying a white flag a parley is requested just as *expressly* as if it were asked for by word of mouth. The security of the enemy who accepts this invitation is *tacitly promised*.

(*a*) *De Jure Belli et Pacis, Lib.* II, Cap. XVI, § 5.

(*b*) Q. Fabius Labeo, according to Valerius Maximus; Livy does not mention the act.

(*c*) Annales, Lib. XII.

(*d*) Lib. III, Cap. XXIV, § 1.

(*e*) Livy, Lib. XXXVIII, Cap. XXV.

(*f*) History of the Emperors, by Crevier: Life of Valerian.

(*g*) Lib. III, Cap. XXIV, § 5.

CHAPTER XVI.

Securities Given for the Observance of Treaties.

§ 235. Guaranties. Taught by sad experience that the sacred and inviolable duty of fidelity to treaties is not always a safe assurance that they will be observed, men have sought to obtain securities against perfidy, means for enforcing observance independently of the good faith of the contracting parties. A *guaranty* is one of these means. When those who conclude a treaty of peace, or any other treaty, are not absolutely confident of its observance they ask to have it guaranteed by a powerful sovereign. The *guarantor* promises to uphold the terms of the treaty and to procure their observance. As he may find himself obliged to use force, if either of the contracting parties should try to avoid the fulfillment of its promises, the position of guarantor is one which no sovereign will assume lightly or without good reasons. Princes seldom do so unless they have an indirect interest in the observance of the treaty or are induced by motives of friendship. The guaranty may be given to all of the contracting parties alike, to certain ones only, or even to a single one; it is ordinarily given to all alike. It may also happen that several sovereigns, on forming a common alliance, agree to become reciprocally guarantors of its observance. A *guaranty* is a species of treaty by which the guarantor promises assistance to a State in case it has need of it to constrain a faithless ally to fulfill his promises.

§ 236. They give no right to the guarantor to intervene in the execution of the treaty unless called upon. Since guaranties are given in favor of the contracting parties, or of one of them, they in no way authorize the guarantor to interfere in the execution of the treaty or to enforce its observance unless he is called upon by the parties to do so. If the parties to an agreement think it proper to depart from the terms of the treaty, to change some of its provisions, or even to annul it completely, they have the right to do so, and the guarantor can not oppose them. The obligation of his promise to uphold the State which should have cause to complain of an infraction of the treaty does not give him any rights on his own account. The treaty was not made for him; otherwise he would not be the mere guarantor, but one of the parties to the original contract. This point is of importance. Care must be taken lest, under the pretense of being guarantor, a powerful sovereign should set himself up as arbiter of the affairs of his neighbors and claim to impose his will upon them.

But it is true that if the parties make any change in the provisions of the treaty without the consent and concurrence of the guarantor, the latter is no longer held to his promise; for the treaty, in its changed form, is not the one which he guaranteed.

§ 237. Nature of the obligation they impose. Since no Nation is obliged to do for another what the latter can do for itself, it follows naturally that the guarantor is not bound to give his assistance, except in a case where the State in whose favor the guaranty was made is unable to obtain justice for itself.

If disputes should arise between the contracting parties as to the interpretation of some article of the treaty, the guarantor is not bound to give his assistance immediately to the State in whose favor the guaranty was made. As he can not bind himself to uphold injustice, it is his duty to examine the treaty, to seek the true interpretation of it, and to weigh the claims of the State asking for his assistance; and if he finds its claims unfounded he may refuse to support them without failing in his promises.

It is no less evident that a guaranty can not impair the rights of third parties. If it should happen, therefore, that the guaranteed treaty operate in impairment of the rights of a third party, the treaty would be unjust on that point and the

§ 238. A guaranty must not impair the rights of third parties. guarantor is in no way held to see that it is carried out; for, as we have just said, he can never bind himself to support injustice. This was the motive alleged by France when it declared for the House of Bavaria against the heiress of Charles VI, although it had guaranteed the famous *pragmatic sanction* of that Emperor. In principle the motive can not be questioned, and consequently the only point was to see whether the French court had grounds for applying it. *Non nostrum inter vos tantas componere lites.*

I must remark in this place that in ordinary use the term *guaranty* is often taken in a sense somewhat different from the precise one which we have given to the word. The majority of the European powers *guaranteed* the act by which Charles VI regulated the succession to his dominions. Sovereigns sometimes mutually guarantee their respective States. We should rather term such agreements treaties of alliance to maintain a given law of succession, to uphold the possession of the States in question.

§ 239. Duration of the guaranty. The guaranty naturally continues in force as long as does the treaty which it guarantees; and in cases of doubt this should always be presumed, since the guaranty is asked for and given as security for the treaty. But there is no reason why the guaranty should not be limited to a certain time, to the life of the contracting parties, to that of the guarantor, etc. In a word, all that we have said of treaties in general can be applied to treaties of guaranty.

§240. Treaties in which a third state acts as surety. When the treaty stipulates for the performance of certain things by the promisee as well as by the promisor, as, for example, the payment of a sum of money, it is safer to require that some third State be *surety* for the promise rather than *guarantor* of it; for one who acts as *surety* must make good the promise in default of the principal, whereas a guarantor is only obliged to do what he can to have the promise carried out by the State which made it.

§241. Pledges, securities, mortgages. A Nation may turn over certain of its property into the hands of another, as security for its promises, debts, or contracts. If the property is personal the security is termed a *pledge*. Poland once pledged a crown and other jewels to the sovereigns of Prussia. But towns and provinces are sometimes given as *security*. If they are merely pledged by a deed assigning them as security for a debt they serve properly as a *mortgage;* if they are turned over to the creditor, or to the State with which the treaty is drawn up, they are held as *security;* and if the revenues are ceded as an equivalent for the interest of the debt, the agreement is termed *antichresis*.

§ 242. Rights of a nation over property it holds as security. The rights of a sovereign who holds a town or province as security are limited to what is necessary to secure the payment of the debt or the fulfillment of the promise made to him. He may therefore retain possession of the town or province until the agreement has been carried out; but he can introduce no changes in them, for they are not his own property. He may not even interfere in the government of them further than the necessity of the situation requires, unless the exercise of sovereignty over them has been expressly given to him. There is no presumption in favor of this last point, since the mortgagee is sufficiently secured when the territory is put into his hands and under his power. He is even obliged, as are all mortgagees in possession, to preserve the territory he holds as security and to prevent, as far as possible, its deterioration; he is responsible for it, and if it should come to be ruined through his fault, he must indemnify the State that gave it to him as security. If sovereignty has been turned over to him with the actual territory he must govern it according to its constitution and in precisely the same manner as the sovereign of the territory was obliged to govern it; for the latter could only transfer his lawful rights.

As soon as the debt is paid or the treaty carried out the purpose of the security is effected, and he who holds a town or province by that title must faithfully restore it in the same state in which it was received, as far as this is possible.

§ 243. When the holder must restore the property.

But with those whose only rule is their greed or their ambition, who, like Achilles, make might their right,(*a*) the opportunity is a tempting one; they have recourse to a thousand quibbles and pretexts to keep in their hands an important stronghold or a territory adapted to their wants. The iniquity of such practices is evident, and cases in which they have been employed are sufficiently numerous and well-known to convince every sensible Nation how imprudent it is to give such securities.

But if the debt is not paid at the appointed time, if the treaty has not been carried out, the property given as security may be retained and appropriated, or the mortgaged property seized, at least until the debt has been paid or just compensation made. The House of Savoy mortgaged the territory of Vaud to the two cantons of Berne and Fribourg. As it did not pay the debt, the two cantons had recourse to arms and took possession of the country. The Duke of Savoy, instead of promptly settling their claims, forcibly resisted the steps they had taken, and thus gave further subject of complaint. The cantons were victorious and have since kept possession of that beautiful country both as payment of the debt and as just indemnity for the expenses of the war.

§ 244. When the holder may appropriate it.

Finally, another form of security, of long and frequent use among Nations, is that of requiring *hostages*. Hostages are persons of distinction whom the promisor in a treaty delivers up to the other party to be held by the latter until the promise has been carried out. Here also we have a contract of surety, in which free persons are delivered up instead of towns, provinces, or precious jewels. Hence we need only make, with reference to it, such special observations as are called for by the difference of the things pledged.

§ 245. Hostages.

The sovereign who receives hostages has no further rights over them than are involved in securing their persons, so as to hold them until the promises of which they are the security have been fully carried out. Hence he may take precautions to prevent them from escaping; but these precautions must be tempered by sentiments of humanity towards persons whom he has no right to treat badly, and they should not be extended beyond what prudence requires.

§ 246. What rights are possessed over them.

It is pleasing to see the European Nations of the present day content themselves with the parole of their hostages. The English lords who were given as hostages to France, in accordance with the Treaty of Aix-la-Chapelle in 1748, until the restitution of Cape Breton, were bound by their mere word of honor and lived at the court and in Paris rather as ministers of their country than as hostages.

Only the liberty of the hostages is given as security, and if the sovereign who has given them fails to keep his word, they can be retained in captivity. In former times they were put to death in such cases—an act of inhuman cruelty founded upon an error. It was believed that the sovereign might arbitrarily dispose of the lives of his subjects, or that each man was the master of his own life and had the right to pledge it when he gave himself as a hostage.

§ 247. Only the liberty of the hostages is given as security.

As soon as the agreements have been carried out, the purpose for which the hostages were given has been accomplished; the hostages are therefore free and should be given up without delay. They should likewise be restored if the purpose for which they were given should prove unreal; to retain them under such circumstances would be to abuse the sacred faith upon which they are delivered. The

§ 248. When hostages should be returned.

(*a*) Jura negat sibi nata, nil non arrogat armis. (Horace.)

perfidious Christiern II, King of Denmark, being delayed before Stockholm by contrary winds and seeing himself and his whole fleet about to perish with hunger, made proposals of peace. The governor, Steno, imprudently trusted him, furnished the Danes with provisions, and even gave Gustavus and six other nobles as hostages for the safety of the King, who pretended that he desired to come on shore. At the first favorable wind Christiern weighed anchor and sailed away with the hostages, thus repaying the generosity of his enemy by the basest treachery.(*a*)

§249. Whether they can be retained on any other account.

Since hostages are given in reliance upon the faith of treaties, and since the sovereign who receives them agrees to restore them as soon as the promise, of which they are the security, shall have been carried out, such agreements should be fulfilled to the letter, and the hostages must be actually and faithfully restored to their former condition as soon as they are redeemed by the fulfillment of the promise. They may not, therefore, be retained on any other account. I am surprised to find learned writers(*b*) teaching the contrary. They base their contention on the fact that a sovereign may seize and hold the subjects of another sovereign in order to force the latter to do him justice. The principle is true, but it is wrongly applied. These writers fail to note that a hostage would not be in the power of that sovereign, nor exposed to be so easily seized, were it not for the treaty in virtue of which the hostage was given; and that a faithful adherence to that treaty does not permit that any other use be made of the hostage than the one for which he was intended, nor any other advantage taken of his detention than the one expressly agreed upon. The hostage is given as security for a promise, and for that only; as soon as the promise has been fulfilled the hostage should be restored, as we have just said, to his former condition. To say to him that he is released as a hostage but held as security for some other claim would be profiting by his position as a hostage in clear opposition to the spirit and even to the letter of the agreement, according to which, as soon as the promise should be fulfilled the hostage was to be given his liberty and to be returned to his country and to be restored to his former condition, as if he had never been given as a hostage. If this principle be not rigorously adhered to, States can no longer give hostages in safety; it will always be easy for princes to find some pretext to retain them. When Albert the Wise, Duke of Austria, was at war with the town of Zurich in the year 1351, the two parties referred the decision of their disputes to arbitrators, and Zurich gave hostages. The arbitrators rendered an unjust award, it being dictated by partiality. Nevertheless Zurich, after making just complaint, decided to submit to the decision. But the Duke set up new claims and retained the hostages,(*c*) an act in clear violation of the agreement and in contempt of the Law of Nations.

§ 250. They can be retained because of their own actions.

But a hostage may be retained because of his own actions, because of crimes committed or debts contracted in the foreign country during the time he is held there as hostage. This is no violation of the faith of the treaty. The hostage can not claim the right to commit with impunity crimes against the Nation which holds him and be assured of obtaining his liberty by the terms of the treaty; and it is just that when he is about to leave the country he should pay his debts.

§ 251. Support of hostages.

It is the part of the sovereign who gives the hostages to provide for their support; for they are in the foreign country under his orders and in his service. The sovereign who receives them as security should not undergo the expenses of their support, but merely those of their custody, if he think it proper to keep guard over them.

(*a*) History of the Revolutions of Sweden.

(*b*) Grotius, Lib. III, Cap. XX, § 55; Wolf, *Jus Gent.*, § 503.

(*c*) Tschudi, Tom. I, p. 421.

§ 252. A subject may not refuse to become a hostage.

The sovereign can dispose of his subjects for the service of the State; he may, therefore, give them as hostages, and those who are appointed as such must obey, as they must on all other occasions when the State requires their services. But as the expenses should be borne equally by all the citizens, the hostage should be indemnified from the public treasury.

It is, therefore, only a subject who can be given as a hostage against his will. A vassal does not come under the rule; his duties to the sovereign are determined by the conditions on which the fief is held and extend no further. Accordingly it is agreed that a vassal is not bound to go as a hostage if he is not at the same time a subject.

Whoever has the power to enter into a treaty or a convention can give and receive hostages. Hence not only the sovereign has the right to give them, but also subordinate officials when making agreements within the authority of their office and the scope of their commission. The commander of a fortress and the besieging general give and receive hostages as security for a capitulation; all persons who are under their command must obey if they are appointed as hostages.

§ 253. Rank of hostages.

Hostages should naturally be persons of importance, since they are required as security. Persons of low rank would constitute poor security unless a great number of them were given. As a rule the rank of the hostages to be given is carefully stipulated, and any failure to fulfill such an agreement is a flagrant act of bad faith. It was an act of shameless perfidy on the part of La Trimouille to give the Swiss four hostages from the scum of the people instead of four of the chief citizens of Dijon, as had been stipulated for in the famous treaty of which we spoke above (§ 212). At times statesmen and even princes are given as hostages. Francis I gave his own sons as security for the Treaty of Madrid.

§ 254. They should not seek to escape.

The sovereign who gives hostages should give them in good faith, as pledges for his word, and therefore with the intention that they be held until the complete fulfillment of his promise. Hence he may not approve of their escaping; and if they do so, instead of receiving them he should deliver them anew. The hostage on his part should correspond with the presumed intentions of his sovereign and remain faithfully in the country to which he is sent without seeking to escape. Cloelia escaped from the hands of Porsena, to whom she had been given as a hostage, but the Romans returned her, so as not to violate the treaty.(*a*)

§ 255. Whether a hostage who dies should be replaced.

If the hostage should happen to die the sovereign who gave him is not obliged to replace him, unless there exists an agreement to that effect. The required security was given and is lost through no fault of the giver; there is no reason why another should be given.

§ 256. One who takes the place of a hostage.

If any person takes for a time the place of a hostage and the latter should die a natural death, the substitute is free; for the effects of the death of the hostage should be the same as if he had not absented himself and been replaced by a substitute. In like manner the hostage is not freed by the death of a temporary substitute. The opposite would hold had one been exchanged for the other, in which case the hostage would be absolutely free and his substitute would alone be bound.

§ 257. A hostage succeeding to the crown.

If a prince who has been given as hostage should succeed to the crown, he should be given up on the surrender of another acceptable hostage, or several of them who may constitute together a security equivalent to that which the prince constituted when delivered as a hostage. This is evident from the treaty itself, which did not stipulate that the King should be a hostage. That the person of the sovereign should be in the hands of the enemy is a matter of such moment that it can not be presumed that the State meant to expose itself to it. Good faith should prevail in

---

(*a*) Et Romani pignus pacis ex fœdere restituerunt. (Livy, Lib. II, Cap. XIII.)

every agreement, and the evident or justly presumed intention of the contracting parties should be followed. If Francis I had died after giving his sons as hostages, the Dauphin should certainly have been released; for the Dauphin was only given as hostage in order to restore the King to his throne, and if the Emperor had kept the Dauphin the agreement would have failed of its purpose, since the King would still have been captive. It is evident that I am going on the assumption that the treaty has not been violated by the State which has given the Prince as hostage. In case that State had failed to keep its word, the other might reasonably take advantage of an event which would render the hostage much more valuable and his deliverance more necessary.

§ 258. The liability of a hostage terminates with the treaty.

The liability of a hostage, as that of a town or of a province, terminates with the treaty of which they are the security (§ 245). Consequently, if the treaty is a personal one the hostage is free at the moment one of the contracting parties happens to die.

§ 259. A violation of the treaty is an injury done to the hostages.

The sovereign who, after having given hostages, fails to keep his word, does an injury not only to the other contracting party, but also to the hostages themselves; for although subjects are bound to obey their sovereign when he appoints them as hostages, yet the sovereign has no right to sacrifice their liberty needlessly and to put their lives in danger without good cause. As they were given to serve as security for the word of the sovereign and not to suffer any harm, if the sovereign by violating his faith brings misfortune upon them he is guilty of a double crime. Pledges and mortgages serve as security for what is due; their possession compensates the holder for a failure by the giver to keep his word. Hostages are rather assurances that he who gives them will keep his word; it is presumed that he would revolt at the idea of sacrificing innocent persons. But if special circumstances force the sovereign to abandon the hostages, if, for example, the State which holds them violates its engagements first and the sovereign who has given them can no longer carry out the treaty without putting the State in danger, every effort should be made to deliver those unfortunate hostages, and the State may not refuse to indemnify them for their sufferings and to make amends to them, either in their own person or in that of their relatives.

§ 260. Fate of hostages when he who has given them fails to keep his word.

As soon as the sovereign who has given the hostage has violated his faith, the hostage loses his character as a hostage and becomes the prisoner of the sovereign who holds him. The latter may keep him in perpetual captivity. But it becomes a generous prince not to take advantage of his rights at the expense of an innocent person; and as the hostage is no longer under any obligations towards the sovereign who by his perfidy has abandoned the hostage, if he wishes to transfer his allegiance to the sovereign who now has control over him the latter can acquire a useful subject in place of a wretched prisoner, an annoying object of pity. Or he may liberate the hostage, after exacting certain conditions from him.

§ 261. Rights founded on custom.

We have already remarked that it is not lawful to take the life of a hostage because of the perfidy of the sovereign who has given him. No custom of Nations, however well established, can justify an act of barbarous cruelty, in violation of the Law of Nature. Even at a time when that dreadful custom was too well authorized, the great Scipio boldly declared that he would not wreak his vengeance upon innocent hostages, but upon the perfidious persons themselves, and that he could only punish enemies in arms.(*a*) The Emperor Julian made the same assertion.(*b*) The greatest effect such a custom can have is to exempt from denunication the Nations which practice it. Whoever follows it can not complain that another does so likewise. But every Nation can and should assert that it considers the practice an inhuman act of barbarism.

(*a*) Livy, Lib. xxviii, Cap. xxxiv.

(*b*) See Grotius, Lib. iii, Cap. xi, § xviii, not. 2.

CHAPTER XVII.

The Interpretation of Treaties.

§ 262. Necessity of laying down certain rules of interpretation.

If the ideas of men were always precise and perfectly defined, and if these ideas could only be expressed in appropriate terms, in words at once clear, accurate, and susceptible of only one sense, there would never be any difficulty in finding out the intention which it was desired to convey by the words used; one need only understand the language. But even then the art of interpretation would not be without its use. In concessions, agreements, treaties, in all contracts, just as in laws, it is impossible to foresee and point out all the specific cases that may arise under them. Certain things are enacted, decreed, or agreed upon in general terms, and although these terms were perfectly clear, definite, and precise, the correct interpretation would still consist in making a proper application of them to all the particular cases that arise. That is not all. Circumstances vary and produce new kinds of cases which can only be brought under the terms of the treaty or of the law by inferences drawn from the general intention of the contracting parties or of the legislator. There are found to be contradictions and inconsistencies, real or apparent, between the various provisions; and it becomes necessary to reconcile them, to determine which meaning is to prevail. But the difficulty is seen to be even greater when we consider that fraud seeks to take advantage even of the imperfection of language, and that men deliberately employ obscure and ambiguous terms in their treaties in order to provide a pretext for eluding the obligation when the time comes. It is therefore necessary to lay down rules founded upon reason and authorized by the natural law and adapted to throw light upon what is obscure, decide what is uncertain, and frustrate the designs of one who enters into the contract in bad faith. Let us begin with those rules which have in view this last point in particular, with those principles of justice and equity whose object is to repress fraud and to prevent the effect of its tricks.

§ 263. First general principle: it is not permissible to interpret what has no need of interpretation.

The first general rule of interpretation is that *it is not permissible to interpret what has no need of interpretation.* When a deed is worded in clear and precise terms, when its meaning is evident and leads to no absurdity, there is no ground for refusing to accept the meaning which the deed naturally presents. To have recourse to conjectures in order to restrict or extend its meaning is to attempt to elude it. Once allow so dangerous a practice and there is no deed which it will not render ineffectual. However clearly the provisions of an act be worded, however definite and precise its terms, all will be of no avail if it be permissible to argue from extraneous sources that the deed is not to be taken in the sense which it naturally bears.

§ 264. Second general principle: if he who could and should have explained himself has not done so, it is to his own loss.

The cavilers who dispute the meaning of a clear and definite provision are in the habit of seeking their empty pretexts in the intention or purpose which they ascribe to the author of the provision. It would very often be dangerous to enter with them into a discussion of these supposed meanings, which the deed itself does not warrant. The rule here laid down is better adapted to frustrating such persons and cutting short their sophistry: *If he who could and should have explained himself clearly and fully has not done it, so much the worse for him; he can not afterwards be admitted to prove restrictions which he has not expressed.* It is the principle of the Roman law: *Pactionem obscuram iis nocere, in quorum fuit potestate legem apertius* *conscribere.*(*a*) The justice of the principle is obvious, and its necessity is no less evident. No agreement could be relied upon, no concession could be certain and permanent, if limitations which should have been stated in the deed if they were in the minds of the contracting parties could be subsequently alleged to defeat the treaty.

§ 265. Third general principle: neither of the contracting parties may interpret the contract after his own mind.

The third general principle of interpretation is that *neither of the parties who have an interest in the contract or treaty may interpret it after his own mind;* for if you have the right to give to my promise what meaning you please you will be able to regulate my obligations at will, contrary to the intention and beyond the scope of my actual agreement; and, conversely, if I am to be allowed to explain my promises after my own pleasure I shall have it in my power to render them meaningless and of no effect by giving them a meaning quite different from that they had for you when you accepted them.

§ 266. Fourth general principle: what is sufficiently expressed is taken as the real intention.

Whenever a person could and should have expressed his intention, what he did express in sufficiently clear terms is assumed against him as his real intention. This is an incontestable principle applied to treaties; for if they have any meaning at all they must express the real intent of the contracting parties. Unless an intention expressed in sufficiently clear terms could be reasonably taken as the real intention of the speaker or of the contracting party, it would be useless to make contracts or enter into treaties.

§ 267. We should be guided rather by the words of the promisor than by those of the promisee.

But, it is asked here, is the true meaning of a contract to be determined from the expressions of the promisor or from those of the promisee? Since the binding force of every contract comes from the perfect promise it contains, and since the promisor can not be bound beyond his intentions as sufficiently expressed, it is certain that to discover the true meaning of a contract, *attention should be paid principally to the words of the promisor*, for he binds himself voluntarily by the words he uses, and what he has sufficiently expressed is assumed against him as true. What seems to have given rise to the above question is the manner in which agreements are sometimes entered into. One of the parties offers the conditions and the other accepts them, that is to say, the former proposes what he considers are the obligations of the latter, and the latter declares what he will actually be bound by. If the words of the party accepting the conditions have reference to the words of the party offering them, it is true that we should be guided by the expressions of the latter, but this is because the promisor is regarded as merely repeating the terms offered in making his promise. The capitulations of besieged towns can serve here as an example. The besieged party proposes the conditions on which he is willing to surrender the town; the besieger accepts them; the words of the former in no way bind the latter, except in so far as the latter adopts them. The one who accepts the conditions offered is the real promisor, and it is in his words that the true meaning of the contract is to be sought, whether he has himself chosen and formulated the terms used or has adopted the language of the other party by referring to it in his promise. But it must always be borne in mind, as was stated above, that what a person has expressed in sufficiently clear terms is assumed against him as true. I will make myself yet more clearly understood.

§ 268. Fifth general principle: the interpretation must be made according to fixed rules.

In the interpretation of a treaty or deed of any kind the question is to find out what the contracting parties have agreed upon, to determine precisely what has been promised and accepted, when a case in point arises; that is to say, to discover not only what one of the parties had the intention of promising, but also what the other reasonably and in good faith believed was being promised him—what was

---

(*a*) Digest. Lib. II, Tit. XIV, de Pactis, Leg. 39. See also Digest. Lib. XVIII, Tit. I, de Contrahenda Emptione, Leg. 21. Labeo scripsit obscuritatem pacti nocere potius debere venditori, qui id dixerit, quam emptori; quia potuit re integra apertius dicere.

sufficiently expressed to him and on which his acceptance was based. *The interpretation of every contract and of every treaty should therefore be conducted according to fixed rules, adapted to determining the meaning of the contract as it was naturally understood by the parties when drawn up and accepted.* This is a fifth principle.

As these rules are founded upon right reason and are consequently approved and prescribed by the Law of Nature, every man and every sovereign is bound to accept them and follow them. Unless we recognize rules for determining the meaning to be given to the language used, treaties will be no more than mere words, no agreement can be safely relied upon, and it will be almost ridiculous to place any dependence upon the effect of conventions.

§ 269. The faith of treaties creates an obligation to observe these rules.

But as sovereigns acknowledge no common judge, no superior power capable of forcing them to accept an interpretation founded upon just rules, the faith of treaties constitutes here the sole security of the contracting parties. That faith is no less violated by a refusal to accept an interpretation evidently just than by an open breach of faith. The injustice and faithlessness are in each case the same and are not less to be condemned because they are covered over by the subtleties of fraud.

§ 270. General rule of interpretation.

Let us now consider in detail the rules to be followed in the endeavor to obtain a just and fair interpretation: (1) Since the sole object of a lawful interpretation is to discover the intention of the maker or makers of the treaty, *when any obscurity is met with in the treaty we must seek for the probable intention of the parties to it and interpret it accordingly.* This is the general rule of every interpretation. It serves particularly to fix the meaning of certain expressions which are not sufficiently clear. Following this rule these expressions must be taken in their most extended meaning when it is probable that the speaker meant them to have that meaning; and, on the other hand, they should be taken in a restricted sense if it appears that the speaker had that sense in view. Suppose that a husband has bequeathed to his wife all his money. The question arises whether this expression means only his ready money or whether it extends to what is invested, to what is due on notes and other securities. If the wife is poor, if she was beloved by her husband, if the ready money is small in amount, and the value of the other property greatly in excess of that of the ready money, both specie and paper, there is every reason to think that the husband meant to bequeath to her as well the money due him as that actually in his possession. On the other hand, if the wife is rich, if the ready money is large in amount, and if the value of the money due is greatly in excess of that of the other property, the probability is that the husband meant to leave his wife only his ready money.

Following the same rule, a provision should be given the most extended meaning which the terms will admit, if it appear that the maker of the deed meant them to have that meaning; but the meaning must be restricted when it is probable that the maker of the deed did not mean to give to the terms the widest interpretation which they will literally bear. The following example is quoted: A father, who has an only son, bequeaths to the daughter of a friend *all his jewels.* Among his effects is a sword, ornamented with diamonds, which had been given him by a King. Certainly there is no reason to think that the testator meant to dispose of that honorable token outside of his own family. Hence the sword, together with the jewels with which it is ornamented, must be excepted from the legacy, and the meaning of the terms must be restricted to ordinary jewels. But if the testator has neither son nor heir of his own name, if he designated someone not of the family as his heir, there is no reason to restrict the meaning of the terms and they must be taken in all their strictness, since it is probable that the testator used them in that sense.

§271. Terms should be given their ordinary meaning.

The contracting parties must express themselves in such a way as mutually to understand each other. This is clear from the very nature of the contract. Those who form a contract unite their wills in a mutual agreement to accept certain terms; how then are they to agree if they do not understand each other perfectly? Their contract will be no more than a jest or a snare. If, therefore, they would speak so as to be understood, they must use words in their proper sense, in the sense given them in ordinary use; they must attach to the terms they employ and to all their expressions the received signification. They may not depart designedly, and without giving notice of the fact, from the correct usage as established by custom; and it is presumed that the parties have conformed to that usage so long as there are no cogent reasons for believing the contrary, for in general it is presumed that things have been done as they should have been done. From all these incontestable truths results the following rule: *In the interpretation of treaties, contracts, and promises the ordinary meaning of words should not be departed from, except for the most urgent reasons.* When certitude can not be had in human affairs we must act on probabilities. It is ordinarily very probable that words have been used in their customary sense and the presumption to that effect is always very strong and can only be overcome by an even stronger presumption to the contrary. Camden (*a*) speaks of a treaty in which it was expressly stated that the terms of the treaty were to be given their full and correct meaning. With such a clause no pretext could be advanced for departing from the meaning given to the terms by ordinary use, since the contracting parties have formally and definitely expressed their will to that effect.

§ 272. The interpretation of very old treaties.

The use to which we refer is that of the period at which the treaty or other deed was entered into and its terms drawn up. Languages are constantly varying in form; the force and meaning of terms change in the course of time. When we have to interpret a very old treaty we must know the common use of the terms at the time the treaty was drawn up, and we can discover what that use was from deeds of the same period and from contemporary writers, by a careful process of comparison. It is the sole means of obtaining results that can be relied upon. The use of living languages being, as everyone knows, very arbitrary, etymological and grammatical investigations to discover the true sense of a word in ordinary use can be of theoretical value only and are useless as a means of proof.

§273. Quibbles on words.

The sole purpose of words is to express thoughts, so that the true meaning of a term, in its ordinary use, is the idea which custom attaches to it. Consequently it is a detestable quibble to use words in a special sense in order to escape the natural meaning of the entire expression. Mahomet, Emperor of the Turks, at the taking of Negropont, promised a man to spare his head, but then had him cut in two through the middle of the body. Tamerlane, after having promised, at the capitulation of the town of Sebastia, not to shed blood, had the soldiers of the garrison buried alive. (*b*) Such contemptible subterfuges only aggravate, as Cicero remarks, the sin of perfidy. (*c*) *To spare a person's head, to shed no blood*, are expressions which, in ordinary use, and especially on such an occasion, mean exactly the same thing as *to spare a person's life.*

§ 274. Rule on this point.

All these wretched subtleties are overthrown by this rule, the justice of which can not be questioned: *When it is clearly seen what meaning agrees with the intention*

(*a*) History of the Reign of Queen Elizabeth, Part II.

(*b*) See Pufendorf, *Jus Naturæ et Gentium*, Lib. v, Cap. XII, § 3. La-Croix, in his Histoire de Timur-bec, Liv. v, Chap. XV, speaks of this cruelty of Timur-bec, or Tamerlane, towards 4,000 Armenian cavalry, but does not mention the act of perfidy which others attribute to thim.

(*c*) Fraus enim adstringit, non dissolvit perjurium. (*De Officiis*, Lib. III, c. XXXII.)

of the contracting parties it is not permissible to twist their words so as to make them give a contrary meaning. It is the intention, sufficiently made known, which constitutes the real subject of the agreement, the promises that are made and accepted, the terms asked and granted. To act contrary to the clear intent of the parties is what constitutes a violation of the treaty rather than to disclaim the terms in which it is drawn up; for the terms count for nothing apart from the intention they express.

§ 275. Mental reservations.

Is it necessary, in an age of enlightenment, to say that mental reservations can not be allowed in treaties? The point is clear enough, for from the very nature of a treaty the parties should express themselves in such a way as to be mutually understood (§ 271). There is scarcely anyone to be found to-day who would not be ashamed to base a claim upon a mental reservation. What is the purpose of such a trick, except to deceive another by the pretense of a contract? It is, therefore, a case of pure and simple knavery.

§ 276. The interpretation of technical terms.

Technical terms, or terms peculiar to the arts and sciences, *should ordinarily be interpreted according to the definition given them by persons versed in the knowledge of the art or science to which the term belongs.* I say *ordinarily*, for the rule is not so absolute but that it may, and even should be, departed from when there are good reasons for doing so; as, for example, if it were shown that the maker of the treaty or other deed did not understand the art or science from which the term was borrowed, that he was not aware of the force of the term taken in its technical sense, that he used it in its popular sense, etc.

§ 277. Terms whose meaning admits of degrees.

If, however, *the technical or other terms relate to things which admit of different degrees, we need not adhere strictly to definitions, but we should rather take the terms in a sense which fits the context;* for we regularly define a thing after its perfect condition, and yet it is certain that every time we speak of the thing we do not refer to it in that perfect condition. Now, the interpretation should have for its object merely to discover the intention of the contracting parties (§ 268); it should therefore give to each term the sense which the speaker probably had in mind. Thus, when it is agreed in a treaty to submit to the decision of two or three able judges, it would be ridiculous to try to escape from the agreement on the ground that no judge can be found who is in every respect perfect, or to strain the words so as to exclude all those who are not the equals of Cujas or Grotius. If one has stipulated for ten thousand good troops would he be justified in expecting soldiers of whom the poorest should equal the veterans of Julius Cæsar? And if a prince has promised his ally a good general, must he send him no other than a Marlborough or a Turenne?

§ 278. Certain figurative expressions.

There are figurative expressions which have become so familiar from common use that they take the place of the proper expressions in most cases, so that they should be understood in their figurative sense rather than in their original, literal, and direct signification. The subject-matter in question indicates sufficiently the sense to be given them. To weave a plot, to carry fire and sword throughout the land, are such expressions. There is scarcely any occasion when it would not be absurd to take them in their literal and direct sense.

§ 279. Equivocal expressions.

Perhaps there is no language which does not also contain words which signify two or more different things and phrases susceptible of more than one sense. This gives rise to ambiguity in the use of language, a fault which the contracting parties should carefully avoid. To use such terms deliberately, so as later on to escape from obligations, is actual perfidy, since good faith obliges the contracting parties to express their intentions clearly (§ 271). But if ambiguity has crept into a deed it is the part of the interpreter to clear up the doubts it gives rise to.

§ 280. Rule for these two cases.

This case, as well as the preceding one, should be governed by the following rule: *We should always give to expressions the sense most suited to the subject-matter to which they refer;* for the object of a just interpretation is to discover what was in the mind of the persons speaking, of the contracting parties in a treaty. Now, it should be presumed that one who uses a word susceptible of several meanings understood it in the sense suited to the subject treated of. In proportion as he is taken up with the subject in hand the terms suited to express his thought will come to his mind; hence an equivocal word can only suggest itself in the sense suited to expressing the thought of him who makes use of it, that is to say, in the sense suited to the subject-matter. It is idle to object that equivocal expressions are sometimes resorted to so as to convey a different idea from that which is in the mind of the speaker, and that in such a case the sense which suits the subject-matter is not that which corresponds to the intention of the speaker. We have already observed that whenever a man can and should make known his intention, what he has declared in sufficiently clear terms is assumed against him as true (§266). And as good faith should prevail in agreements, they are always to be interpreted on the assumption that it did so prevail. Let us illustrate the rule by some examples. The word *day* may mean either the *natural day*, the time when the sun gives us light, or the *legal day*, a space of twenty-four hours. When it is used in a treaty to designate a space of time the subject-matter of the treaty clearly shows that the term was meant to refer to the legal day, a period of twenty-four hours. It was, therefore, a wretched subterfuge, or rather a striking case of perfidy, on the part of Cleomenes when, after having concluded a truce of several *days* with the citizens of Argos, on finding them asleep the third night in reliance on the truce he killed some of them and took the others prisoners, alleging that the nights were not comprehended in the truce.(*a*) The word *steel* may mean either the metal itself or certain instruments made of it. In an agreement which provides that *the enemy shall lay down their steel*, the word evidently means *their weapons*. Thus Pericles, in the example related above (§ 233), gave a fraudulent interpretation to his words, since it was contrary to what the nature of the agreement clearly called for. Q. Fabius Labeo, of whom we made mention in the same paragraph, was equally dishonest in his interpretation of the treaty with Antiochus; for when a sovereign stipulates that half of his fleet shall be returned to him, he certainly intends that the vessels returned be such as he can make use of and not halves of the original vessels sawed in two. Pericles and Fabius are likewise condemned by the rule laid down above (§ 274), which forbids twisting the sense of words contrary to the evident intention of the contracting parties.

§ 281. It is not necessary to give the same sense to a term wherever it occurs in the deed.

If any of those terms which have several different meanings occur more than once in the same deed we can not make it a rule that the term must be taken everywhere in the same sense; for, in accordance with the preceding rule, the term, as it occurs in the various articles, must be given the sense which the subject-matter calls for—*pro substrata materia*, as scholars put it. The word *day*, for example, has two meanings as we have just said (§ 280); if it is stated in an agreement that there is to be a truce of fifty days, on condition that commissioners from both parties shall, during eight successive days, consult together in an endeavor to adjust the matter in dispute, the fifty days of the truce are to be understood as legal days of twenty-four hours; but it would be ridiculous to give the same meaning to the term in the second article and to pretend that the commissions should work eight days and nights without a break.

(*a*) See Pufendorf, Lib. v, Cap. xii, § 7.

§ 282. Any interpretation that leads to an absurdity should be rejected.

Any interpretation that leads to an absurdity should be rejected; or, in other words, we can not give to a deed a sense that leads to an absurdity, but we must interpret it so as to avoid the absurdity. As it is not to be presumed that a person intends what is absurd, we can not suppose that the speaker meant that his words should lead to an absurdity. No more can it be presumed that he approached so serious a matter in a trifling spirit; for what is dishonest and unlawful is not to be presumed. By the word *absurd* is meant not only what is *physically* impossible, but also what is *morally* impossible; that is to say, what is so contrary to reason that it can not be attributed to a man of good sense. The fanatical Jews, who scrupled to defend themselves when the enemy attacked them on the Sabbath day, gave an absurd interpretation to the fourth commandment. Why did they not also refrain from walking, dressing, and eating? For those also are *works*, if the word be pressed to its strictest meaning. It is said that a certain Englishman married three wives so as not to come under the law which forbids marrying two. The story is doubtless a fanciful one, told for the purpose of ridiculing the extreme caution of the English, who stick to the literal application of the law. This wise and free people have seen but too well, from the experience of other Nations, that laws cease to be a strong barrier, a secure protection, once it is permitted to the executive power to interpret them at its pleasure. But they are doubtless ready to admit that on occasions the letter of the law is strained to a sense that is manifestly absurd.

The rule we have just laid down is one of absolute necessity and should be followed even when the text of the law or treaty, considered in itself, contains nothing that is obscure or equivocal; for it must be observed that uncertainty in the meaning to be given to a law or treaty is not due only to obscurities or other faults of expression, but is likewise due to the limitations of the human mind, which can not foresee all cases and all circumstances nor apprehend all the consequences of what is enacted or agreed to, and finally, to the impossibility of entering into so many details. Laws and treaties can only be stated in general terms, and in being applied to particular cases they should be interpreted agreeably to the intention of the legislator or of the contracting parties. In no case can it be presumed that the parties had in mind anything absurd. Consequently, when their expressions, taken in the proper and ordinary sense, lead to absurdities, we must deviate from that sense just so far as is necessary to avoid the absurdity. Imagine a captain who, having received orders to advance with his troops in a straight line to a certain point, finds a precipice in his way. Certainly his orders do not mean that he must cast himself into it. He should therefore turn aside from the straight line, so far as is necessary to avoid the precipice, but no farther.

The application of the rule is easier when the expressions of the law or of the treaty are susceptible of two different meanings. In that case we adopt without hesitation the meaning which does not lead to anything absurd. Likewise, if the expression can be given a figurative sense, this must doubtless be done when it is necessary to avoid falling into an absurdity.

§ 283. And one which would render the deed null and void.

It is not to be presumed that sensible persons, when drawing up a treaty or any other serious document, meant that nothing should come of their act. *The interpretation which would render the document null and void can not be admitted.* This rule may be considered as a subdivision of the preceding one, for it is a form of absurdity that the very terms of the document should reduce it to mean nothing. *The document must be interpreted in such a way as to produce its effect and not prove meaningless and void;* and in doing so the same method is to be followed as was pointed out in the preceding paragraph. In both cases, as in all cases of interpretation, the object is to give to the words the sense which is presumed to be most conformable to the intention of the parties. If several different interpretations offer themselves, any one of which will save the document from being null or absurd, that one must be preferred which appears to be most in accord with the intention of the framer of the document, which intention can be ascertained from the peculiar circumstances of the case and from other rules of interpretation. Thucydides relates(*a*) that the Athenians, after having promised to evacuate the territory of the Bœotians, claimed a right to remain in the country, on the ground that the territory actually occupied by their army did not belong to the Bœotians—a ridiculous quibble, since by giving that sense to the treaty it had no meaning at all, or rather was a mere trifling with words. *The territory of the Bœotians* should evidently have been taken to mean the lands comprised within their former boundaries, without excepting those of which the enemy had taken possession during the war.

§ 284. Obscure expressions to be interpreted by other clearer ones of the same writer.

If one who has expressed himself in an obscure or equivocal manner has spoken elsewhere more clearly upon the same subject he is the best interpreter of himself. *His obscure or equivocal expressions should be interpreted so as to make them agree with the clear and unambiguous terms which he elsewhere uses, either in the same document or upon a similar occasion.* In fact, so long as there is no proof that a man has changed his mind, it is presumed that he had a similar intention upon similar occasions, so that, if he has anywhere clearly manifested his intention upon a certain subject, the same sense is to be given to obscure terms which he elsewhere employs with reference to the same subject. Suppose, for example, that two allies have mutually promised each other, in case of need, the assistance of ten thousand infantry, to be supported at the expense of him who furnishes them; and that in a later treaty they agree to assist each other with fifteen thousand men, but make no mention of their support. The obscurity or uncertainty which remains in this article of the new treaty is cleared up by the clear and formal stipulation in the former treaty. There is no indication that the allies have changed their mind as to the support of the troops to be furnished, and therefore no change of mind is to be presumed, so that the fifteen thousand men will be supported as would have been the ten thousand promised in the former treaty. The same rule holds good with even greater reason when there is question of two articles of the same treaty; when, for example, a prince promises ten thousand men, paid and supported at his own expense, for the defense of the States of his ally, and in another article only four thousand men in case the ally enters upon an offensive war.

§ 285. Interpretation based upon the internal coherence of the document.

It frequently happens that for the sake of conciseness persons express themselves imperfectly, and somewhat obscurely, when they think that their meaning is sufficiently clear from what has gone before or will be so from what is to follow. Moreover, expressions have quite different force, and at times even quite different meaning, according to the context in which they occur. The internal coherence and continuity of the document is therefore another means of interpretation. *The document must be considered as a whole in order to get at the true meaning of it and to give to each expression not so much the meaning which it might have by itself, but that which it should have from the coherence and the spirit of the document.* It is the maxim of the Roman law: Incivile est, nisi tota lege perspecta, unâ aliquâ particulâ ejus propositâ, judicare, vel respondere.(*b*)

(*a*) Book IV, Chap. 98.

(*b*) Digest. Lib. I, Tit. III, De Legibus, Leg. 24.

§ 286. Interpretation based upon the connection between the various provisions.

The connection between the provisions themselves serves, moreover, to indicate and determine the true sense of a treaty or any other document. *The interpretation should be made in such a way that all parts may be consistent with one another, so that what follows may agree with what has preceded, unless it clearly appear that there was an intention to change in the subsequent clauses certain provisions of the previous clauses;* for it is presumed that the framers of a document were logical and consistent in their intentions and did not have in view what was incoherent and contradictory, but rather that they meant one thing to be explained by another; in a word, that the same spirit should prevail throughout the same document or treaty. Let us make this clearer by an example. A treaty of alliance stipulates that if one of the allies be attacked each of the others is to furnish him ten thousand infantry, paid and supported by the sender, and in another article it is said that the ally who is attacked may ask for cavalry instead of infantry. Here we observe that in the first article the allies determined the amount of help to be given, namely, ten thousand infantry, and in the later article they leave the character of the help to the choice of the one who has need of it, without manifesting any intention to change the amount. If, therefore, the ally who is attacked asks for cavalry, the others will give him, according to the fixed proportion, the equivalent of ten thousand infantry. But if it should appear that the object of the later article was to increase, in certain cases, the promised help; if, for example, it was said that if one of the allies should be attacked by a much more powerful enemy possessing strong cavalry forces, the help furnished should be in cavalry and not in infantry, it is evident that in this case the number of cavalry furnished should be ten thousand.

Just as two articles of the same treaty may be connected one with the other, so also may two different treaties be connected, and in this case the one is explained by the other. A person agrees, for a consideration, to deliver ten thousand sacks of wheat. Later on it is agreed that instead of wheat the delivery is to be made in oats. The quantity of oats is not expressed; but it is determined by comparing the second agreement with the first. If there is nothing to indicate that the parties intended, by the second agreement, that the value of the delivery should be reduced, the agreement is to be understood for a quantity of oats corresponding to the price of the ten thousand sacks of wheat; whereas if it clearly appears from the circumstances and motives of the second agreement that the intention of the parties was to make a delivery of lesser value than the one due under the first agreement, then ten thousand sacks of oats are to be substituted for the ten thousand sacks of wheat.

§ 287. Interpretation based upon the purpose of the document.

The motive of the law, or of the treaty, that is to say, the purpose which the parties had in mind, is one of the surest means of fixing its true sense, and careful attention should be paid to it whenever there is question either of explaining an obscure, equivocal, or undetermined passage in a law or treaty, or of applying it to a particular case. *When once the purpose which has led the speaker to act is clearly known his words must be interpreted and applied in the light of that purpose only. Otherwise he would be made to speak and act contrary to his intention and to the object he had in view.* In virtue of this rule a prince who, on giving his daughter in marriage, has promised to assist his future son-in-law in all his wars, is under no obligations to him if the marriage does not take place.

But we must be very sure that we know the real and sole purpose of the law, promise, or treaty. We can not indulge here in vague and uncertain conjectures or imagine motives and purposes where they are not clearly known. If the document in question is intrinsically obscure, if in order to find its meaning there is no other resort than to look for the intention of the writer, the purpose he had in view, in such case recourse may be had to conjectures, and where certitude can not be obtained what is most probable may be accepted as true. But it is a dangerous abuse to go without necessity in search of motives and uncertain purposes in order to twist, restrict, or extend the meaning of a document clear enough in itself and free from absurdities; it is a violation of that rule the justice of which is incontestable, namely, that it is not permissible to interpret what has no need of interpretation (§ 263). Much less is it allowable, when the author of a document has himself set forth his reasons and motives, to attribute to him some secret purpose, in order to base thereon an interpretation contrary to the natural sense of the terms. Although in fact he might have had in mind the purpose attributed to him, if he has hidden it and set forth other motives the interpretation can only be based upon the latter, and not upon the purpose which the author did not express; what he has declared in sufficiently clear terms is assumed against him as true (§ 266).

§ 288. When the decision is based upon several motives.

Interpretations of this kind should be all the more carefully conducted, since the maker of a law or promise may be influenced by several concurrent motives. It may be that all those motives taken together determined his decision, or that each of them, taken separately, would have been sufficient. In the first case, *if it is quite clear that the legislator or the contracting parties enacted the law or entered into the contract only in consideration of several motives and reasons taken together, the interpretation and application of the document should be made in the light of all those concurrent motives*, and none of them can be neglected. But in the second case, *when it is clear that each of the motives which have concurred to bring about the decision was of itself sufficient to produce that effect, so that the author of the document in question would have come to the same resolve, if influenced by each of the motives separately, that he came to when influenced by all together, his words should be interpreted and applied in the light of each of those motives taken individually.* Suppose that a prince has promised certain favors to all *Protestants and artisans* who shall come from foreign countries to settle in his States; if this prince is in no need of subjects, but only of artisans, and if on the other hand it appears that he wants only Protestant subjects, his promise should be interpreted so as to include only foreigners who unite the two qualities of Protestant and artisan. But if it is clear that the prince desires to populate his States, and that while preferring Protestant subjects to others he is in such great need of artisans that he will gladly receive them, whatever religion they profess, his words must be taken in a disjunctive sense, so that one who is either a Protestant or an artisan may enjoy the promised favors.

§ 289. What constitutes a sufficient motive for an act of the will.

In order to avoid both diffuse and involved forms of expression we shall use the term *sufficient motive* to indicate the motive which has called forth an act of the will, which has determined the will on the occasion in question, whether the will has been determined by one motive only or by several taken together. Hence it may happen that this *sufficient motive* will be made up of several different motives, so that if one of the motives be absent the *sufficient motive* does not exist; and in those cases where we say that several motives have concurred in determining the will, in such a way, however, that each individual motive would have been capable by itself of producing the same effect, there will then be several *sufficient motives* for one and the same act of the will. Instances of this can be seen daily. A prince, for example, will declare war because of three or four wrongs done him, each of which would have been sufficient to call forth a declaration of war.

§ 290. Extensive interpretation based upon the purpose of the document.

The consideration of the reason for a law or the motive of a promise serves not only to explain obscure or equivocal terms, but also to extend or restrict the provisions of the law or promise, independently of the terms, by conforming to the intentions and purposes of the legislator or of the contracting parties, instead of to their words; for according to the dictum of Cicero,(*a*) language, having been devised to make known the will, should not defeat its own purpose. *When the sufficient and sole motive of a provision*, whether of a law or of a promise, *is perfectly certain and well understood, the provision is extended to cases to which the same motive is applicable, although they are not comprised in the meaning of the terms.* This is what is called *extensive interpretation.* It is commonly said that *we should follow the spirit rather than the letter* of the law. Thus the Mohammedans reasonably extend the prohibition of wine, in the Koran, to all intoxicating liquors, since that dangerous quality was the sole reason which could have led their legislator to forbid the use of wine. Thus, again, if it were agreed, at a time when there were no other fortifications than walls, not to inclose a certain town with walls, it would not be permissible to fortify it with moats and ramparts, since the sole object of the treaty was evidently to prevent the town from being converted into a fortress.

But the same precaution should be observed here as was referred to above (§ 287), and even greater precaution, since we are applying the document in a way not authorized by its terms. We must be quite sure that we know the true and sole motive of the law or promise, and that the author meant it to have the same scope which it must have to embrace the case to which we wish to extend it. Moreover, I do not overlook here what I said above (§ 268), that the true sense of a promise is not only that sense which the maker of the promise had in mind, but that which he has sufficiently made known, the sense in which the two contracting parties reasonably understood the promise. The true motive of a promise is, in like manner, the motive which is to be gathered from the nature of the contract, the subjects involved in it, and other circumstances; it would be useless and ridiculous to allege some further motive which the person might have had secretly in mind.

§ 291. Frauds resorted to in the effort to evade laws or promises.

The rule which we have just laid down serves likewise to defeat the pretexts and wretched evasions resorted to by those who seek to evade laws or treaties. Good faith abides by the intention; fraud insists upon the terms when it thinks it can find in them a cover for its designs. The island of Pharos outside of Alexandria was, among other islands, tributary to the Rhodians. When the Rhodians sent certain persons to collect the tribute, the Queen of Egypt amused them for some time at her court, and in the meanwhile she hastened to join the island to the mainland by means of piers, after which she laughed at the Rhodians and sent word to them that they were unreasonable in seeking to levy upon the mainland a tribute which they could only exact from islands.(*b*) A law forbade the Corinthians to give vessels to the Athenians; they sold them vessels at five drachmæ each.(*c*) It was an expedient worthy of Tiberius to order the executioner, who by custom was not permitted to strangle a virgin, first to rob the young daughter of Sejanus of her virginity, and then to strangle her.(*d*) To violate the spirit of the law, while pretending to respect the letter of it, is a fraud no less criminal in character than an open violation of the law would be; it is not less contrary to the intention of the legislator, and indicates only a more cunning and deliberate wickedness.

(*a*) Quid? verbis satis hoc cautum erat? Minime. Quæ res igitur valuit? Voluntas: quæ si, tacitis nobis, intelligi posset, verbis omnino non uteremur; quia non potest, verba reperta sunt, non quæ impedirent, sed quæ indicarent voluntatem. Cicero, Orat. pro Cæcina.

(*b*) Pufendorf, Lib. v, Cap. xii, § 18. He quotes Ammianus Marcellinus, Lib. xxii, Cap. xvi.

(*c*) Pufendorf, *ibid*; Herodotus, Erato.

(*d*) Tacitus, Annales, Lib. v, 9.

§ 292. Restrictive interpretation.

Restrictive interpretation, which is the contrary of *extensive interpretation*, is based upon the same principle. Just as a provision is extended to cases which, although not included within the meaning of the terms, are included within the intention of the provision and are embraced by the motive which gave rise to it; so also a law or a promise may be restricted by following out the motive of the law or promise, contrary to the literal meaning of the terms. That is to say, *if a case should arise which can not at all be brought under the motive of the law or promise, the case should be excepted from its application, although if the meaning of the terms be alone regarded, the case would fall under the provisions of the law or promise.* It is impossible to think of every case, to foresee and provide for everything; it is enough to set forth certain things in such a way as to make one's thought clear even as to those not referred to; and as Seneca the rhetorician(*a*) says, there are exceptions so clear that it is not necessary to state them. The law condemns to death whoever shall strike his father; is he to be punished who shakes and strikes his father in the effort to rouse him from a lethargic stupor? Is a little child, or a man who is insane, to be put to death because either may have struck his parent? In the first case the purpose of the law does not come into play and to the two others it is not applicable. We must restore what has been intrusted to us. Shall I return to a robber what he has intrusted to me if the true owner appears in the meantime and demands his property? A man has intrusted to me his sword; shall I return it to him when, in a transport of fury, he asks to have it in order to kill an innocent person?

§ 293. Its use in order to avoid falling into what is absurd or unlawful.

We resort to restrictive interpretation in order to avoid falling into absurdities (see § 282). A man bequeaths to one person his house and to another his garden, which can not be entered except through the house. It would be absurd to bequeath a garden, and not include in the bequest a right on the part of the beneficiary to enter the garden. We must restrict, therefore, the pure and simple gift of the house, and conclude that it was only made with the condition of allowing a passage to the garden. This same method of interpretation is applied whenever the law or the treaty, taken strictly according to its terms, would lead to something unlawful. Such cases must be excepted from the operation of the law or treaty, since no one may decree or promise what is unlawful. For this reason, although one has promised assistance to an ally in all his wars, one should not give him help when he undertakes a war that is manifestly unjust.

§ 294. Or what is too severe and burdensome.

When a case arises in which it would be too severe upon and too injurious to anyone to take a law or promise strictly according to its terms, the principle of restrictive interpretation is applied, and an exception is made of the case, agreeably to the intention of the legislator or of the person who has made the promise; for the legislator only desires what is just and fair, and in contracts no one can bind himself in favor of another in such a way as to neglect essentially his duty to himself. Hence it is rightly presumed that neither the legislator nor the contracting parties meant to extend their provisions to cases of this nature and that they themselves, if they were present, would make an exception of them. A prince is no longer bound to send help to his allies when he himself is attacked and has need of all his forces for his own defense. He may also, without any breach of faith, abandon an alliance when the ill success of the war shows him that his State is upon the verge of ruin if he does not immediately treat with the enemy. Thus, towards the close of the last century, Victor Amadeus, Duke of Savoy, saw himself forced to

---

(*a*) Lib. IV, Controv. XXVII.

break away from his allies and to come to terms with France in order to save his States. The King, his son, would have had good reason in the year 1745 to justify him in concluding a separate peace; but his courage did not fail him, and a correct view of his true interests led him to take the generous resolution of struggling on under critical conditions which might have dispensed him from keeping to his agreement.

§ 295. How it should restrict terms to the meaning suited to the subject-matter.

It was said above (§ 280) that expressions must be given the sense that agrees with the subject-matter. Restrictive interpretation also comes under this rule. *If the subject-matter treated of will not suffer the terms of a provision to be taken in their widest sense, their meaning must be restricted according as the subject-matter demands.* Suppose that the custom of a country limits the descent of hereditary fiefs to heirs descended exclusively through male ancestors. If a deed of feoffment, drawn up in that country, states that the fief is given to a person for himself and his *male descendants*, the meaning of these last words should be restricted to males descended from males; for the subject-matter of the deed will not permit us to extend the words to males descended from females, although they may be among the male descendants of the first purchaser.

§ 296. How a change in the circumstances can create an exception.

The following question has been proposed and debated: Whether promises necessarily include the implied condition that circumstances remain as they are, or whether a change in the circumstances can create an exception to the promise, and even render it void. The question must be solved by applying the principle of the motive involved in the promise. *If it is certain and evident that the consideration of the circumstances existing at the time entered into the motive of the promise, that the promise was made in view and because of those circumstances, the promise is dependent upon the continued existence of the same circumstances.* This is evident, since the promise was only made upon that supposition. When, therefore, the circumstances essential to the promise, and without which it certainly would not have been made, happen to change, the promise falls when its basis is destroyed; and in particular cases, when circumstances cease for a time to be the same as those which brought about or helped to bring about the promise, an exception should be made to its enforcement. An elective prince, having no issue, has promised an ally to procure his designation as successor. A son is born to him. Who can doubt that the promise is invalidated by that circumstance? A prince who, being at peace, has promised help to an ally, need not give it when he has need of all his forces for the defense of his own States. The allies of a prince whose power is inconsiderable, although they have promised him their faithful and constant help to enable him to increase his power, or to obtain for him, by election or by marriage, a neighboring State, would have good cause to refuse him any aid or assistance, and even to unite against him, as soon as they perceive that he has arrived at such a height of power as to threaten the liberties of all Europe. If the great Gustavus had not been killed at Lutzen, Cardinal Richelieu, who had made an alliance for his master with that prince, and who had brought him into Germany and given him financial help, would, perhaps, have found himself obliged to thwart the conqueror then become formidable, and to set bounds to his astonishing progress, and to support his humbled enemies. The States-General of the United Provinces acted upon these principles in 1668. In favor of Spain, which had before been their mortal enemy, they formed the Triple Alliance against Louis XIV, their former ally. Bounds had to be set to the advance of a power which threatened to sweep all before it.

But great caution must be observed in the application of the present rule. It would be a shameful abuse of it to take advantage of every change of circumstances in order to set aside a promise; there would be no promise on which reliance could be placed. Only those circumstances because of which the promise was made are essential to it; and it is only a change in those circumstances which can lawfully hinder or suspend the effect of the promise. That is the sense to be given to the principle of the jurisconsults, *Conventio omnis intelligitur rebus sic stantibus.*

What we say of promises should be extended to laws as well. A law which is framed to meet certain circumstances can only be valid for those circumstances. The same principle is to be applied when persons are acting under orders. Thus, Titus, who had been sent by his father to pay his respects to the Emperor, turned back when the news reached him of the death of Galba.

§ 297. Interpretation of a document in unforeseen cases.

In unforeseen cases, that is to say, when circumstances arise which the author of the document did not foresee, and could not have thought of, *we must be guided rather by his intention than by his words, and we must interpret the document as he himself would interpret it, if he were present*, or *as he would have done if he had foreseen the circumstances as they are now.* This rule is of great use with judges and with all those who are appointed by the State to carry out the testamentary provisions of the citizens. A father appoints by will a guardian for his infant children. After his death, the judge finds that the guardian appointed is a profligate, possessing neither property nor good morals; the judge removes him and appoints another, according to the Roman law,(*a*) thus carrying out the intention of the testator and not his words; for it is reasonable to think, and the presumption should be to the same effect, that the father certainly did not mean to give his children a guardian who would ruin them. He would have appointed another had he known the vices of the one he did appoint.

§298. Motives taken from the fact that a thing is possible, though not actually existent.

When the things which constitute the motive of a law or of an agreement are considered not as actually existent, but merely as possible; or, in other words, *when the fear of a result is the motive of a law or of a promise, only those cases can be considered as exceptions in which it is proved that the result is actually impossible.* The mere possibility of the result is sufficient to bar any exception. If, for example, a treaty stipulates that a State is not to send an army or a fleet to a certain place, it may not send one there on the pretext that it has no unfriendly designs in doing so; for the object of a provision of that nature is not only to prevent actual harm, but also to remove all danger and to avoid even the least subject of uneasiness. The same principle is involved in the law which forbids persons to walk through the streets at night with a torch or lighted candle. It is idle for one who has violated the law to say that no harm came of his act; that he carried the torch so carefully that no ill result need have been feared; the bare possibility of causing a fire is enough to bring the act under the law, and the law has been violated by exciting fears which it was the intention of the legislator to prevent.

§ 299. Expressions susceptible of both an extended and a restricted sense.

At the beginning of this chapter we observed that men's ideas are not always clearly defined, nor is the language used to express them always precise. Doubtless there is no language which does not contain expressions, words, or phrases susceptible of a more or less extended meaning. Some words apply equally to the genus and to the species; the word *fault* includes both *guilt* and unintentional *mistakes;* several species of animals have only one name for both genders, *partridge*, *lark*, *sparrow*, etc.; when we speak of *horses* merely with reference to the services they render to man we include *mares* also under the term. Words used in their technical sense have sometimes a wider, sometimes a narrower meaning than in their

---

(*a*) Digest. Lib. XXVI, Tit. III; De Confirm. Tutor., Leg. 10.

popular sense; the word *death*, in Roman law, signifies not only natural death, but also civil death; the Latin word *verbum*, as a grammatical term, signifies *a verb*, while in ordinary use it signifies *a word*. In like manner the same phrase often has a wider meaning at one time than at another, according to the subject-matter to which it is applied. *To send help* is at times understood of troops paid and supported by the sender, at other times of troops whose expenses are to be paid by the party receiving them. Consequently, rules must be laid down for the interpretation of such indeterminate expressions in order to point out when they should be taken in their widest sense and when they should be confined to their narrowest sense. Several of the rules which we have already set forth can serve for this purpose.

§ 300. Things favorable and things objectionable.

But the special point to be considered here is the famous distinction between things *favorable* and things *objectionable*. Certain authors have rejected the distinction,(*a*) but this is doubtless due to their not having well understood it. In fact, the definitions which have been given of what is *favorable* and what is objectionable are not fully satisfactory, and are not easy of application. After having carefully considered what the most thoughtful authors have written on the subject, it seems to me that the following statement will sum up the question and give a just idea of that famous distinction. When the provisions of a law or of an agreement are clear, definite, precise, and of certain and easy application there is no room for any interpretation of or commentary upon them (§ 263). The precise things desired by the legislator or the contracting parties are what must be carried out. But if their expressions are indeterminate, vague, and susceptible of a wider or narrower meaning, if the precise thing they intended, in the particular case in question, can not be found out by the other rules of interpretation, it must be conjectured in accordance with the rules of reason and equity, and for that purpose attention must be given to the nature of the things treated of. There are certain things which equity prefers rather to extend than to restrict; that is to say, with regard to those things, when the precise intent of the law or contract can not be ascertained, it is safer, in the interests of justice, to give a liberal rather than a strict interpretation to the terms, to extend the meaning of the terms rather than restrict it. Such things are called *favorable*. On the other hand, things *objectionable* are those which it is more surely in keeping with justice to restrict than to extend. Let us imagine the will, the intention, of the legislator or of the contracting parties to be a fixed point. If that point is clearly known we must stop precisely upon it; if it is uncertain we must at least seek to approach it. In things *favorable* it is better to go beyond the point than not to reach it; in things *objectionable* it is better not to reach it than to go beyond it.

§ 301. Whatever is equally beneficial to both parties is favorable; the contrary is objectionable.

It will not be difficult now to point out, in general, what things are *favorable* and what things *objectionable*. First of all, *whatever makes for the common benefit of the contracting parties and tends to put them on a footing of equality is favorable.* Justice demands, as the general rule of contracts, that the conditions between the parties should be equal. It is not to be thought, without the strongest reasons, that one of the contracting parties meant to favor the other to his own prejudice; but there is no danger in interpreting liberally what is for the common benefit of both. If, therefore, the contracting parties have not expressed their intentions clearly enough, and with the requisite precision, it is certainly more in accord with justice to look for their intentions in the meaning which is equally beneficial to both parties than in the contrary meaning. For the same reason, *whatever does not make*

(*a*) See the remarks of Barbeyrac upon Grotius and Pufendorf.

for the common benefit of the contracting parties, and tends to destroy the equality of a contract, whatever burdens only one of the parties, or one more than the other, is objectionable. In a treaty of close friendship, union, and alliance, everything which, without being burdensome to any of the parties, makes for the common benefit of the confederation and tends to unite the members more closely is favorable. In unequal treaties, and especially in unequal alliances, all the unequal clauses, and particularly those which burden the weaker ally, are objectionable. On this principle that, in cases of doubt, we should extend what makes for equality and restrict what destroys it, is based the well-known rule: He who seeks to avoid a loss has a better cause than he who seeks to obtain an advantage—*Incommoda vitantis melior, quam commoda petentis est causa.*(a)

§ 302. What is beneficial to human society is favorable; the contrary is objectionable.

All those things which, without burdening too much anyone in particular, are useful and beneficial to human society should be counted among the number of things favorable; for a Nation is already under a natural obligation to further such things, so that if it has entered into any special agreement with respect to them no risk is run in giving to the agreement the most liberal interpretation it can receive. Shall we be afraid of doing injustice in following the natural law, in giving their fullest scope to obligations which make for the good of humanity? Besides, things beneficial to human society by that very fact make for the common benefit of the contracting parties and are therefore *favorable* (§ 301). On the other hand, *let us hold as objectionable whatever, of its nature, is rather hurtful than useful to mankind.* Things which tend to promote peace are favorable; those which lead to war are objectionable.

§ 303. Terms which impose a penalty are objectionable.

Terms which impose a penalty are objectionable. With respect to laws it is agreed by all that, in cases of doubt, the judge should decide in favor of leniency, and that it is unquestionably better to let a guilty man escape than to punish an innocent one. Penal clauses in treaties burden one of the parties; they are therefore *objectionable* (§ 301).

§ 304. Whatever nullifies a treaty is objectionable.

Whatever renders a treaty null and void, either in whole or in part, and consequently, *whatever brings about any change in things already settled, is objectionable;* for men treat with one another for their common benefit, and if I have gained some advantage by a lawful contract, I can only lose that advantage by renouncing it. When, therefore, I consent to new clauses which seem to derogate from it, I can only lose so much of my right as I clearly forego, and therefore those clauses should be taken in the narrowest sense of which they are susceptible, as is the case with things *objectionable* (§ 300). If provisions which can render a treaty null and void are contained in the treaty itself, it is clear that they should be taken in their most restricted sense—in the sense best suited to leaving the treaty in force. We have already seen that every interpretation which tends to render a treaty null and void must be rejected (§ 283).

§ 305. Whatever tends to change the present state of things is objectionable; the contrary is favorable.

We should also *class among things objectionable whatever tends to change the present state of things,* for an owner can only lose his right precisely in so far as he has relinquished it, and in doubtful cases the presumption is in favor of the possessor. It is less contrary to justice to withhold from the owner property which he has lost possession of through neglect than to deprive the just possessor of what lawfully belongs to him. Hence we should rather risk making an interpretation which will be open to the former objection than to the latter. Here also, in many cases, can be applied the rule referred to in § 301, that he who seeks to avoid a loss has a better cause than he who seeks to obtain an advantage.

(a) Quintilian, Instit. Orat. Lib. VII, Cap. IV.

§ 306. Things combining both what is favorable and what is objectionable.

Finally, there are things which are at once either favorable or objectionable, according as one element or another of them be considered. Whatever weakens the force of treaties, or changes the existing state of things, is objectionable; but if it promotes peace it is in that respect favorable. Penalties are always of an objectionable character; still, they may be classed as favorable on those occasions when they are urgently necessary for the safety of society. When things of this nature have to be interpreted we should consider whether what is favorable in them greatly exceeds what is objectionable; whether the good to be procured in giving them the fullest application which the terms of the treaty will permit of far outweighs what is harsh and objectionable in them, in which case *they are to be classed among things favorable.* Thus, a slight change in the existing state of things, or in agreements, is overlooked when it procures the precious blessing of peace. In like manner penal laws may be given their widest meaning on critical occasions when such rigorous application of them is necessary to the safety of the State. Cicero, in executing the accomplices of Cataline, acted upon a decree of the Senate; the safety of the Republic did not permit him to wait until they had been condemned by the people. But where the favorable elements are not thus greatly in excess of the unfavorable ones, and where things are in other respects equal, we must incline to the side which presents nothing objectionable; I mean, we should refrain from doing objectionable things unless the benefit to be derived from them so greatly outweighs what is objectionable in them that the objectionable features in a way disappear. If the favorable and objectionable features come at all near balancing, *the subject is to be classed among things objectionable;* this follows from the principle on which we base the distinction between what is favorable and what is objectionable (§ 300), because, in case of doubt, we must choose the side on which there is less risk of offending justice. A State would rightfully refuse, in a doubtful case, to give help to another, although a thing favorable, when there is question of giving it against an ally, which would be objectionable.

§ 307. Interpretation of things favorable.

Here, then, are the rules of interpretation which follow from the principles just laid down:

(1) *When the provision relates to things favorable the terms should be given the widest meaning of which they are susceptible according to common use, and if a term has several meanings the most extensive one should be preferred;* for equity should be the rule of conduct for all men wherever there is not a perfect right precisely determined and understood. When legislators, or contracting parties, have not indicated their intention in precise and perfectly definite terms, it is presumed that they intended what is most equitable. Now in the case of favorable things, the most extensive meaning of the terms is more in accord with equity than their most restricted meaning. Thus Cicero, in pleading for Cæcina, justly maintains that the interlocutory decree ordering that *a person who has been driven from his inheritance be restored to the possession of it* should be extended also to persons who have been prevented by force from entering upon it;(*a*) and the Digest gives the same decision.(*b*) It is true that this decision is based also upon the rule of extending the law to other cases to which the purpose of the law equally applies (§ 290), for in actual effect it is the same thing to drive one from his inheritance as forcibly to prevent him from entering upon it, and in both cases there is the same reason for restoring him.

(*a*) Oratio pro Cæcina, Cap. XXIII.

(*b*) Digest. Lib. XLIII, Tit. XVI; De Vi et Vi Armata, Leg. I et III.

(2) *In the case of things favorable technical terms should be given as wide a meaning as they have, not only in common use, but even as technical terms, provided the person who uses the terms understands the science to which they belong, or is advised by persons who understand it.*

(3) *But we should not, for the sole reason that a thing is favorable, take the terms in an improper sense; this is not permissible, except where necessary to avoid absurdity, injustice, or the invalidity of the law or treaty*, as is done in all cases (§§ 282, 283); for the terms of an instrument should be taken in their proper sense, as determined by usage, unless there are very strong reasons for departing from it (§ 271).

(4) *Although a thing appears favorable when viewed from one side, if the proper meaning of the terms, taken in their extensive sense, leads to some absurdity or injustice, their meaning must be restricted, according to the rules given above* (§§ 293, 294); for in this particular case the thing combines what is favorable and what is objectionable; indeed, it should rather be put in the class of objectionable things.

(5) For the same reason, *although in fact neither absurdity nor injustice results from using the terms in their proper meaning, yet if a clear case of justice or a great common advantage requires their restriction, we should adhere to the strictest meaning which the terms will admit of, even when the subject-matter is in itself favorable.* Here again the subject-matter combines what is favorable and what is objectionable, and in the particular case should be regarded as objectionable. It should always be remembered, however, that all these rules apply to doubtful cases only, since we should not seek to interpret what is clear and precise (§ 263). If a person has clearly and formally bound himself to do something that is burdensome to him it is his willing act and he can not afterwards be admitted to plead equity.

§ 308. Interpretation of things objectionable.

Since things objectionable are those of such a nature that their restriction more surely promotes equity than their extension, and since, in cases where the intention of the legislator or of the contracting parties is not precisely determined and definitely known, we should follow the course which is most in keeping with equity, *in the matter of objectionable things, the terms should be taken in their most restricted sense*, and even *the figurative sense can be to a certain degree considered, in order to avoid oppressive or objectionable results from following the proper and literal sense;* for equity is to be favored and what is objectionable rejected, in so far as this can be done without going directly against the spirit of the treaty and without doing violence to its terms. Now, neither the restricted nor the figurative sense does violence to the terms. If it is said in a treaty that one of the allies shall furnish a certain number of auxiliary troops, at his own expense, and that the other shall furnish a like number, but at the expense of the ally to whom they are sent, there is something objectionable in the agreement of the former ally, since he is burdened more than the latter. But as the terms are clear and precise, there is no room for any restrictive interpretation. But if it had been stipulated in the treaty that one of the allies should furnish ten thousand men and the other only five thousand, without mentioning at whose expense, it should be understood that the troops are to be maintained at the expense of the ally receiving them, since this interpretation is necessary in order not to extend too far the inequality between the contracting parties. Thus, also, the cession of a right, or of a province, made to a conqueror in order to obtain peace is to be interpreted in the most restricted sense. If it be true that the boundaries of Acadia have always been uncertain and that the French were the lawful owners of the country, that Nation will be justified in claiming that the cession of Acadia to the English, by the Treaty of Utrecht, be limited to its narrowest boundaries.

In the case of penalties in particular, when they are really objectionable, not only should the terms of the law or contract be restricted to their narrowest meaning, and even a figurative sense adopted, according as the case requires or allows it, but in addition reasonable excuses must be admitted, which are a kind of restrictive interpretation, tending to free persons from the penalty.

The same rule must be applied to whatever can render a treaty null and void. Thus, when it is agreed that a treaty shall be dissolved, if one of the contracting parties fails in any way to carry out its provisions, it would be both unreasonable and contrary to the purpose of treaties to extend the effect of that clause to trifling faults and to cases where the party at fault can give well-founded excuses.

§ 309. Examples.

Grotius proposes this question: Whether, in a treaty in which *allies* are referred to, the word should be understood only of those who were allies at the time the treaty was entered into or rather of all allies, present and future;(*a*) and he gives as an example the article of the treaty concluded between the Romans and the Carthaginians after the war in Sicily, *that neither of the two Nations should do any injury to the allies of the other.* For a proper understanding of this clause of the treaty we must recall the barbarous practices which formed the Law of Nations of those ancient peoples; they thought it permissible to attack and treat as enemies all those who were not bound to them by an alliance. Hence the clause means that each party is to treat as friends the allies of its ally and to abstain from troubling them or invading their territories; and with this object it is in every respect so favorable, so conformable to the humane sentiments which should unite two allies, that it should without difficulty be extended to all allies, present and future. It can not be said that this clause has something objectionable in it, in that it restricts the liberty of a sovereign State or might cause the breach of an alliance, for in agreeing not to injure the allies of another power a State does not deprive itself of the right to make war upon them if they give just cause for it, and when a clause is just and reasonable it does not become objectionable merely because it may occasion the breach of an alliance. Were that the case there would be no treaty which could not be classed as objectionable. This principle, which we touched upon in the preceding section and in § 304, only holds good in doubtful cases; for example, in the case before us it should have prevented a too hasty decision that the Carthaginians had attacked without cause an ally of the Romans. The Carthaginians could, therefore, without breach of the treaty have attacked Saguntum if they had a lawful reason for doing so, or, in virtue of the voluntary Law of Nations, if they had merely an apparent or specious reason (Introd., § 21). But they could in like manner have attacked the most ancient ally of the Romans; and the latter could also, without breach of the treaty, have limited themselves to assisting Saguntum. At the present day the allies on both sides are included in the treaty. This does not mean that one of the contracting parties can not make war upon the allies of the other if they give cause for it, but only that if any quarrel arises between them the State reserves the right to assist its oldest ally; and in this sense future allies are not included in the treaty.

Another example related by Grotius is also taken from a treaty concluded between Rome and Carthage. When the latter city was reduced to extremities by Scipio Æmilianus and was forced to capitulate, the Romans promised that Carthage *should remain free*, or *should retain the right to govern itself by its own laws.*(*b*) Those merciless conquerors afterwards claimed that the promised liberty had reference to

---

(*a*) Lib. II, Cap. XVI, § 13.

(*b*) Autonomos. App. De Bello Punico.

the inhabitants and not to the city itself; they demanded that Carthage be razed to the ground and that its unfortunate inhabitants settle in a spot further removed from the sea. One can not read the story of this perfidious and cruel treatment without regretting that the great and lovable Scipio was obliged to be the instrument of it. Without commenting on the duplicity of the Romans as to the proper meaning of the word *Carthage*, certainly the *liberty* promised to the Carthaginians, although greatly restricted by the circumstances to which they were reduced, should have included the right to dwell in their own city. To be obliged to abandon their city and settle elsewhere, to lose their houses, their port, and the advantages of location of the city, was a subjection incompatible with the least degree of liberty and was a loss of such consequence that they could not have agreed to submit to it except by positive and formal terms to that effect.

§ 310. How acts of pure liberality should be interpreted.

Gratuitous promises, favors, and rewards are of their nature in the class of things favorable and receive a liberal interpretation, unless they prove burdensome or oppressive to the benefactor, or unless other circumstances show that they should be taken in a restricted sense; for kindness, benevolence, charity, and generosity are liberal virtues; they do not act in a niggardly manner and they know no other limits than those placed by reason. But if the favor burdens too heavily the grantor, it is to that extent objectionable; in doubtful cases equity does not permit the presumption that the favor has been granted or promised according to the full significance of the terms; hence we should limit the terms to the narrowest sense they can bear and thus bring the favor within the bounds of reason. The same rule should be followed when other circumstances clearly indicate a stricter interpretation of the terms to be the more equitable one.

Upon these principles the favors of a sovereign are ordinarily taken in the full extent of the terms.(*a*) It is not presumed that he finds himself burdened thereby; it is a mark of respect to his office to believe that he has been influenced by good motives. Such acts are therefore entirely favorable in themselves, and in order to limit them it must be proved that they are burdensome to the prince or hurtful to the State. Moreover, we should apply to acts of pure liberality the general rule laid down above (§ 270); if these acts are not drawn up in precise and definite terms they must be understood according to the probable intention of the author.

§ 311. The conflict of laws or of treaties.

Let us conclude the subject of interpretation by a consideration of the conflict of laws or of treaties. We do not refer here to the conflict of a treaty with the Law of Nature; the latter unquestionably prevails, as we have proved elsewhere (§§ 160, 161, 170, 293). A conflict occurs between two laws, two promises, or two treaties when a case is presented in which it is impossible to fulfill both of them at the same time, although in other respects the two laws or treaties are not contradictory and could both be carried out at different times. They are regarded as conflicting in the particular instance, and the question is, which should have the preference, or which must be set aside in the given instance? In order to avoid mistakes and to decide in conformity with reason and justice, the following rules should be observed:

§ 312. First rule in cases of conflict.

(1) *In all cases where what is merely permitted is found incompatible with what is prescribed, the latter prevails;* for a mere permission imposes no obligation to do or not do the thing permitted; the matter is left to our choosing; we can do it or not do it. But we have not the same liberty with respect to what is prescribed; we are obliged to do it. The permission can not interfere with the performance of it;

(*a*) This is the rule of the Roman law. Javolenus says: "Beneficium imperatoris quam plenissime interpretari debemus," and he gives this reason for it: " quod a divina ejus indulgentia proficiscatur." (Digest, Lib. I, Tit. IV; De Constit. Princ., Leg. 3.)

on the contrary, what was permitted in general is no longer permitted in the particular case, in which we can not take advantage of the permission without failing in a duty.

§ 313. Second rule. (2) In like manner, *a law or treaty which permits should yield to a law or treaty which forbids;* for the prohibition must be obeyed, and what was permitted in itself, or in general, is found infeasible when it can not be done without violation of a prohibition; the permission no longer exists in the given case.

§ 314. Third rule. (3) Circumstances being in other respects equal, *a law or treaty which prescribes gives way to a law or treaty which forbids.* I say "all the circumstances being otherwise equal," for many other reasons may be found to call for an exception to the prohibitive law or treaty. These rules are general ones; each relates to an idea, taken in the abstract, and indicates what follows from that idea, without prejudice to other rules. This being so, it is easy to see that, in general, if we can not obey a positive precept, without violating a negative precept, we must refrain from obeying the former; for the prohibition is absolute in character, whereas every precept, every command, is of a conditional nature, and supposes the power, or a favorable opportunity, of doing what is prescribed. Now, when we can not do what is prescribed without violating a prohibition, the opportunity is wanting and the conflict of laws creates a moral impossibility of acting; what is prescribed in general ceases to be prescribed when the command can not be carried out without doing what is forbidden.(*a*) It is on this principle that it is generally agreed that we may not employ unlawful means for a praiseworthy end; we may not steal, for example, in order to give alms. But it is understood that the question here is of an absolute prohibition, or of cases in which a general prohibition is truly applicable, and thus equivalent to an absolute prohibition, there being many prohibitions to which circumstances create an exception. We will make our point still clearer by an example: It is expressly forbidden, for reasons unknown to me, to cross certain property for any purpose whatever. I am ordered to carry a message; I find all other ways closed; I retrace my steps rather than take advantage of what is thus absolutely forbidden. But if the prohibition is general in character, made merely for the purpose of preventing damage to the crops, it is easy for me to judge that the orders of which I am bearer should create an exception to the prohibition.

As regards treaties, a State is only obliged to carry out what a treaty prescribes, in so far as it has the power to do so. Now, a State has not the power to do what another treaty forbids. Hence, where the two treaties conflict, an exception is made to the treaty which prescribes, and the treaty which forbids prevails, provided, however, that *circumstances are in other respects equal;* for we shall see, for example, that a treaty can not derogate from an earlier one made with another State nor hinder the effect of it either directly or indirectly.

§ 315. Fourth rule. (4) The dates of laws or treaties furnish further reasons for making exceptions in cases of conflict. *If the conflict is between two affirmative laws, or two affirmative treaties when concluded between the same persons or the same States, the one of later date prevails over the earlier one;* for it is clear that, since the two laws or the two treaties emanate from the same power, the later one may derogate from the earlier one. But the supposition must always be that circumstances are in other respects equal. *If there is a conflict between two treaties made with two different States, the earlier treaty prevails,* for a State can not bind itself by a subsequent treaty to do anything

---

(*a*) The prohibitive law creates, in the given instance, an exception to the affirmative. "Deinde utra Lex jubeat, utra vetet. Nam sæpe ea, quæ vetat, quasi exceptione quadam corrigere videtur illam, quæ jubet." (Cicero, De Inventione, Lib. II, n. 145.)

contrary to an earlier one, and if the later treaty is found, in a given case, to be incompatible with the earlier one, its execution is regarded as impossible, because the State has not the power to act contrary to its previous engagements.

§ 316. Fifth rule.

(5) *Circumstances being in other respects equal, of two laws or two conventions we should give the preference to the one which is less general and which affects more directly the matter in question,* because the special law admits of fewer exceptions than the general one; it is imposed with greater definiteness, and appears to be more positively commanded. Let us make use of this example from Pufendorf:(*a*) There is a law forbidding persons to carry arms in public on holidays; another law orders them to take up arms and go to their posts as soon as they hear the sound of the alarm-bell. The alarm is rung on a holiday. They must obey the second law, which forms an exception to the first.

§ 317. Sixth rule.

(6) *What will not admit of delay should be preferred to what can be done at another time;* for in this way everything can be adjusted and both obligations satisfied, whereas if we give the preference to the duty which can be fulfilled at another time we put ourselves unnecessarily in the position of having to neglect the other.

§ 318. Seventh rule.

(7) *When the legal obligation of two duties is the same, the more important duty, the one which involves a higher degree of virtue and usefulness, should be preferred to the other.* This rule needs no proof. But it has reference to duties which are equally in our power and, so to say, at our option; we must be careful not to apply it mistakenly to two duties the obligation of which is not really the same, so that one duty precludes the other, and the obligation to perform the first leaves no liberty to fulfill the second. For example, it is more praiseworthy to defend a Nation against an unjust aggressor than to aid another in an offensive war. But if the latter Nation is the older ally we are not free to refuse it help in order to assist the other; we are already pledged. Strictly speaking, the two duties are not of equal obligation; they are not at our option; the prior engagement renders the second duty impracticable for the time. However, if it were a question of saving a new ally from certain ruin, and the older ally were not reduced to the same extremity, the rule above given would be applicable.

With respect to laws in particular, the preference should unquestionably be given to the most important and the most necessary. This is the great rule, and the one deserving of most attention, in cases where laws conflict; and it is also the rule which Cicero puts at the head of all the rules he lays down on the subject.(*b*) It would be contrary to the general purpose of the legislator and to the great object of laws to neglect one of great importance on the pretense of observing another less necessary and of less importance; in fact, to do so would be morally wrong, for a lesser good, if it excludes a greater good, becomes to that extent an evil.

§ 319. Eighth rule.

(8) *If we can not fulfill at the same time two promises made to the same person, it is for him to choose which we are to carry out;* for he may dispense us from the other in this instance, and then there will be no longer any conflict between the two. *But if we can not find out what his will is we should presume that he desires the more important one and we should give it the preference; and in case of doubt we should fulfill the one which we are under a greater obligation to perform,* the presumption being that he considered that promise the more important to which he bound us more strictly.

(*a*) *Jus Naturæ et Gentium*, Lib. v, Cap. xii, § 23.

(*b*) "Primum igitur leges oportet contendere, considerando, utra lex ad majores, hoc est, ad utiliores, ad honestiores, ac magis necessarias res pertineat. Ex quo conficitur, ut, si leges duæ, aut si plures, aut quotquot erunt, conservari non possint, quia discrepent inter se; ea maxime conservanda putetur, quæ ad maximas res pertinere videatur." (Cicero, *ubi supra.*)

(9) Since the greater obligation prevails over the lesser, *if it happens that a treaty confirmed by oath is found to be in conflict with a treaty not so confirmed, and circumstances are in other respects equal, the former prevails*, because the oath adds a new force to the obligation. But as it does not change the nature of treaties (§§ 225 and foll.) it can not, for example, entitle a new ally to a preference over an older one, the treaty with whom has not been confirmed by oath. **§ 320. Ninth rule.**

(10) For the same reason, and *circumstances being in other respects equal, what is imposed under a penalty prevails over what is not so imposed; and an obligation accompanied by a heavier penalty prevails over one accompanied by a lesser penalty*, for the agreement fixing a penal sanction gives additional force to the obligation; it proves that the object of the treaty was more earnestly desired,(*a*) and the more so in proportion as the penalty is more or less severe. **§ 321. Tenth rule.**

All the rules contained in this chapter should be combined together, and the interpretation of the law or treaty should be made in accordance with them to the extent to which they are applicable in the given case. When they appear to conflict they mutually counterbalance and limit one another according to their force and importance and according as they apply more particularly to the case in hand. **§ 322. General remark upon the manner of observing all the preceding rules.**

(*a*) The same reason is given by Cicero: "Nam maxime conservanda est ea (*lex*), quæ diligentissima, et sancta est (vel potius, quæ diligentissime sancta est)." (Cicero, *ubi supra*.)

CHAPTER XVIII.

The Manner of Settling Disputes Between Nations.

§ 323. General rule on this subject.

The disputes which arise between Nations or their rulers are concerned either with rights that are contested or injuries that have been received. A Nation should uphold the rights which belong to it; the care of its safety and of its honor does not permit it to submit to injuries. But while fulfilling its duties towards itself a Nation must not forget its duties towards others. These two considerations, taken together, will furnish the principles of the Law of Nations with respect to the way in which disputes between Nations are terminated.

§ 324. Every nation is obliged to render satisfaction for the just complaints of another.

What we have said in Chapters I, IV, and V of this Book makes it unnecessary to prove here that a Nation should do justice to every Nation with respect to its claims, and render satisfaction for just grounds of complaint. A Nation must, therefore, render to others what is due to them, leave them in the peaceable enjoyment of their rights, repair any harm caused or injury done to any of them by itself, render them just satisfaction for an injury which can not be repaired, and give them reasonable securities where they have had just grounds of fear as to what the Nation might do. All these principles are evidently prescribed by that justice the observance of which the Law of Nature imposes upon Nations no less than upon individuals.

§ 325. How far nations may abandon their rights and their just grievances.

Everyone is free to renounce his right, to waive a just subject of complaint, or to forget an injury; but the ruler of a Nation is not, in this respect, as free as a private individual. The latter may listen only to the appeal of generosity and in a matter which concerns himself alone he may give way to the pleasure which he finds in doing good and to his desire for peace and concord. The sovereign, as the representative of the Nation, can not seek his own interests nor yield to his own inclinations. He should regulate his whole conduct according to what is most conducive to the welfare of the State and to the general good of humanity, from which the welfare of the State is inseparable. It is the duty of the Prince on all occasions to consider what policy is best for the State and most in accord with the duties of the Nation towards other Nations and to execute that policy with firmness; he must consult at once justice, equity, charity, sound policy, and prudence. The rights of a Nation are property of which the sovereign is only the trustee; he should not dispose of them in any other manner but that in which he has reason to think the Nation itself would dispose of them. As for injuries, it is often praiseworthy in a citizen to pardon them generously. He lives under the protection of the laws; the magistrates will defend him or punish the ungrateful and contemptible persons who might be emboldened by his kindness to offend him again. A Nation has not the same protection; it is rarely safe in overlooking or pardoning an injury unless it is clearly in a position to crush the State which has dared to offend it. In such a case it is an honorable act to pardon a State which admits the wrong it has done:

Parcere subjectis et debellare superbos.

The pardon can be granted with safety. But as between powers of nearly equal strength, to suffer an injury without demanding complete satisfaction is almost always imputed to weakness or cowardice, and is soon followed by more flagrant injuries. How is it that we often see the very opposite policy followed by sovereigns who think themselves so superior to their fellowmen? Weak States which have had the misfortune to offend them can hardly offer too humble apologies, whereas States which they could not punish without danger are treated with greater moderation.

§ 326. Means recommended by the natural law to nations for the settlement of their disputes: First, Amicable adjustment.

If neither of the Nations between which a difference exists finds it convenient to abandon its rights or its claims, they are bound by the natural law, which recommends peace, concord, and charity, to try the most peaceful methods of terminating their disputes. These methods are: first, an amicable adjustment. Let each Nation calmly and in good faith examine the subject of the dispute and render justice; or let the Nation whose right is doubtful voluntarily renounce it. There are even occasions when the party whose right is the clearer may becomingly abandon it in order to preserve peace. Prudence will point out such occasions. To renounce a right in this way is not the same as abandoning it or neglecting it. Persons are under no obligation to you for what you abandon; but you gain a friend when you amiably yield to another what constituted a subject of dispute.

§ 327. Compromise.

Compromise is a second method of terminating peaceably a dispute. It is an agreement in which the parties, without deciding definitely as to the justice of their conflicting claims, make mutual concessions and settle what share each is to have in the subject of dispute or arrange to give it in its entirety to one of the parties on condition of a certain compensation being made to the other.

§ 328. Mediation.

Mediation, in which a common friend interposes his good offices, is often effective in leading the contending parties to come to an understanding and to adjust or to compromise their rights, and, in the case of injuries, to offer and to accept reasonable satisfaction. The office of mediator calls for no less a degree of integrity than of prudence and tact. The mediator should observe an exact impartiality; he should soothe hurt feelings, calm resentments, and create an attitude of conciliation. His duty is to favor just claims; to see that each party receives what is due to it. But he should not insist scrupulously upon rigorous justice. He is a conciliator, not a judge; his business is to procure peace, and he should persuade the party which has right on its side to concede something, if necessary, in order to obtain so great a blessing.

The mediator is not a guarantor of the treaty he has brought about unless he has expressly undertaken to guarantee it. The office of guarantor is of too serious a character for one to be burdened with it unless he has clearly manifested his consent to assume it. In these days, when the affairs of the sovereigns of Europe are so bound together that each sovereign has his eye on what passes between even the most distant sovereigns, mediation is a means of conciliation much in use. If a dispute should arise, friendly powers, those who fear to see the flames of war enkindled, offer themselves as mediators and make overtures of peace and conciliation.

§ 329. Arbitration.

When sovereigns can not personally adjust their claims, but nevertheless desire to maintain or to restore peace, they sometimes confide the decision of the matter in dispute to arbitrators chosen by mutual consent. When the agreement to arbitrate has been entered into the parties should submit to the decision of the arbitrators; they have pledged themselves to do so and the faith of treaties must be observed.

However, if the arbitrators should render a decision which is evidently unjust and unreasonable, they would thereby divest themselves of their character as arbitrators and their decision would have no weight, since they were only chosen to decide doubtful questions. Suppose that arbitrators should condemn a sovereign State, in reparation for an offense, to become subject to the offended State; would any sensible man say that the State should submit to the decision? If the injustice is of little moment it must be put up with for the sake of peace; and if it is not absolutely evident it should be borne with as an evil to which the State voluntarily exposed itself; for if it were necessary to be convinced of the justice of a sentence before submitting to it, it would be quite useless to appoint arbitrators.

It need not be feared that, in granting to the parties the right not to submit to a decision manifestly unjust and unreasonable, arbitration is thereby rendered useless; nor is such a right contrary to the nature of the agreement to arbitrate. The only difficulty that can arise is in the case of a vague and indefinite agreement, in which the parties have not determined the precise subject in dispute nor marked the limits of their conflicting claims. It may then happen, as in the example just cited, that the arbitrators will exceed their powers and decide points which have not really been submitted to them. Having been appointed to decide what satisfaction a State owes for an offense, they condemn it to become subject to the offended State. Clearly the offending State never gave them such extensive power, and their absurd sentence is in no way binding upon it. In order to avoid all difficulties and to leave no foothold for bad faith it is necessary that the agreement to arbitrate should state the precise subject in dispute, the respective and conflicting claims of the parties, the demands made on the one side and the defense offered on the other. What is thus defined constitutes the subject-matter submitted to the arbitrators and the points on which it is agreed to submit to their decision. Under such conditions, if their decision is within the limits prescribed, the parties must submit to it. It can not be said that the decision is manifestly unjust, since it is given upon a question rendered doubtful by the disagreement of the parties and submitted as such. In order to invalidate a decision of this kind it must be shown that it was the result of corruption or of obvious partiality.

Arbitration is a very reasonable means, and one that is entirely in accord with the natural law, of terminating every dispute which does not directly affect the safety of the State. If the claims of justice may be misconceived by arbitrators, it is more to be feared that they will be overthrown by the chance of war. The Swiss cantons have taken the precaution, in all their alliances with one another, and even in those which they have contracted with neighboring powers, to arrange in advance the manner in which they are to submit their differences to arbitrators in case they can not adjust them by a friendly settlement. This wise precaution has not a little contributed to maintaining the Swiss Republic in that prosperous condition which assures its liberty and which renders it respectable throughout Europe.

§ 330. Conferences and congresses.

In order to put in practice any of these means of terminating disputes, it is necessary for the parties to confer together. Conferences and congresses are therefore a means of conciliation which the natural law recommends to Nations as appropriate for the peaceful settlement of their disputes. Congresses are gatherings of plenipotentiaries for the purpose of finding means of conciliation and of discussing and adjusting the respective claims of their governments. If they are to be successful in their endeavors they must be formed with and directed by a sincere desire of peace and concord. Europe has witnessed during this century two general congresses—that of Cambray(*a*) and that of Soissons;(*b*) tedious farces played upon the political stage, in which the chief actors sought less to arrange a settlement than to seem to desire one.

§ 331. Distinction between evident and doubtful cases.

In order now to determine under what circumstances and to what extent a Nation is obliged to have recourse to, or lend itself to, these various methods of adjustment, and which of them it should settle upon, it is necessary first of all to distinguish between evident cases and doubtful cases. Is the right in question

---

(*a*) In 1724. (*b*) In 1728.

clear, certain, and indisputable? A sovereign may, if he has the power, boldly prosecute it and defend it without submitting it to arbitration. Is he to negotiate and come to a compromise over a thing which manifestly belongs to him, and which is disputed against him without a shadow of right? Much less is he to submit it to the decision of arbitrators. But he should not neglect those means of conciliation which, without compromising his right, can bring his opponent to listen to reason—means such as mediation and conferences. Nature gives us the right to have recourse to force only when gentle and pacific methods have proved ineffectual. We are not allowed to be so inflexible in questions that are uncertain and open to doubt. Who will dare to assert that the other party must at once, and without examination, yield to him a contested right? Such an attitude would render wars perpetual and inevitable. The two contending parties may be equally in good faith; why, then, should one yield to the other? In such a case they can only ask to have the question examined, propose conferences or arbitration, or offer a compromise.

§ 332. Essential rights and less important rights.

In the disputes which arise between sovereigns, a careful distinction must be made between essential rights and less important rights, and a different line of conduct is to be pursued accordingly. A Nation has several classes of duties imposed upon it—duties towards itself, duties towards other Nations, and duties towards human society. We know that, in general, duties towards self prevail over duties towards others; but this is only to be understood of duties which bear some proportion to one another. A nation can not refuse to forget itself to some extent with respect to interests that are not essential, to make some sacrifice, in order to assist others, and above all in order to promote the welfare of human society. We may even suggest that it is to a Nation's own advantage and to its own well-being to make this generous sacrifice; for the private good of each Nation is intimately bound up with the general good of all. What idea should we have of a prince, or of a Nation, who would refuse to yield the smallest advantage in order to gain for the world the inestimable blessing of peace? Each Nation, therefore, owes it to the welfare of human society to show itself open to every means of conciliation, where interests that are not essential, or are of small consequence, are involved. If by an adjustment, a compromise, or an arbitral decision a Nation runs the risk of losing something, it should reflect what are the dangers, the evils, the calamities of war, and consider that peace is worth a slight sacrifice.

But if any one should seek to rob a Nation of an essential right, of a right without which it can not hope to maintain its existence, if an ambitious neighbor should threaten the liberty of a Republic or attempt to subject and enslave it, the Nation will take counsel only of its courage. A settlement by conference will not even be attempted with respect to so repulsive a pretension. A Nation will put forth in such a contest its whole strength, will exhaust its resources, and nobly shed the last drop of its blood. To listen to any terms at all is to risk everything; it can truly say on such an occasion:

Una salus . . . . nullam sperare salutem.

And if fortune is against it, a free Nation will prefer death to servitude. What would have become of Rome if it had listened to timid counsels when Hannibal was encamped before its walls? The Swiss, always so ready to adopt pacific methods of settlement or to submit to legal decisions in disputes on less essential matters, steadily rejected all idea of compromise with those who had designs upon their liberty; they even refused to submit to arbitration or to the judgment of Emperors.(*a*)

(*a*) When, in the year 1355, they allowed Charles IV to arbitrate their dispute with the Dukes of Austria concerning Zug and Glarus, it was only upon the antecedent condition that the Emperor should not let his decision affect in any way the liberty of those countries nor their alliance with the other cantons. (Tschudi, p. 429, and foll.; Stettler, p. 77; *Histoire de la Confédération Helvétique*, by de Watteville, Liv. IV, at the beginning.)

§ 333. Under what circumstances a nation may have recourse to force in a doubtful case.

In cases where the rights at issue are doubtful and where no essential interests are involved, if one of the parties will not listen to proposals of conference, adjustment, or compromise, there remains for the other party the last resort for the defense of itself and its rights, the resort to arms; and the use of force against so stubborn an opponent is justifiable; for where the rights at issue are doubtful, the parties can only ask that all reasonable means be used to throw light upon the question, to decide the dispute, or adjust the conflicting claims (§ 331).

§ 334. And even without attempting other means of settlement.

But let us never lose sight of what a Nation owes to its own security, of the prudence which should constantly guide its action. To authorize recourse to arms it is not always necessary that all means of conciliation shall have been openly rejected by the other party; it is sufficient that the Nation have every reason to think that its enemy would not enter into them in good faith, that the outcome could not be successful, and that the delay would only result in putting it in greater danger of being overpowered. This principle is indisputable, but it is a delicate matter to apply it in practice. A sovereign who does not wish to be regarded as a disturber of the public peace will not be led abruptly to attack a State which has not refused to adopt pacific methods of settlement, unless he is in a position to justify the act in the eyes of the whole world, on the ground that he had reason to regard the overtures for a peaceful settlement as a stratagem intended to deceive him and take him by surprise. To make mere suspicions the authorization for such conduct would be to shake the very foundations of the security of Nations.

§ 335. The voluntary law of nations on this subject.

The good faith of a Nation has always been a subject of suspicion by other Nations, and sad experience shows but too well that the distrust is not always unfounded. Independence and impunity are a touchstone which makes known the alloy of the human heart. The individual makes a show of frankness and honesty, and though the reality may be absent, his state of dependence obliges him to exhibit in his conduct a show of those virtues. The independent sovereign makes an even louder boast of possessing them; but as soon as he has superior strength, if he has not qualities of heart that are unfortunately too rare, scarcely will he seek to keep up appearances; and if great interests are involved he will allow himself to take measures which would cover an individual with shame and disgrace. When, therefore, a Nation claims that it would be dangerous for it to attempt pacific means of settlement, it has only too many plausible excuses at hand for its recourse to arms. And as, in virtue of the natural liberty of Nations, each has the right to decide in its own conscience how it is to act, and to direct, according to its own judgment, its conduct with respect to its duties in all matters not determined by the perfect rights of others (Introd., § 20), it belongs to each Nation to judge whether it is in a position to attempt pacific means of settlement before having recourse to arms. Now, as for these reasons the voluntary Law of Nations ordains that what a Nation thinks fit to do in virtue of its natural liberty should be regarded as lawful (Introd., § 21), in virtue of that same law we must regard as lawful the act of a Nation which, in a doubtful cause, abruptly undertakes to force its enemy to a settlement without having previously tried pacific means. Louis XIV was in the heart of the Netherlands before it was known in Spain that he claimed the sovereignty of a part of those rich provinces by right of the Queen his wife. The King of Prussia, in 1741, published his manifesto in Silesia at the head of sixty thousand men. These Princes may have had wise and just reasons for acting thus, and that is sufficient justification at the tribunal of the voluntary Law of Nations. But an act which this law tolerates through necessity may be very unjust in itself. A prince who puts it into practice may render himself very guilty in his own conscience and acts very unjustly towards the State which he attacks, although he may owe no account of his conduct to Nations, since he can not be accused of having violated the general rules which they are bound to observe in their mutual relations. But if he abuses this liberty, if he renders himself an object of hatred and suspicion among Nations, his conduct will justify them in uniting against him, and thus when he thinks he is furthering his interests he sometimes irretrievably ruins them.

§ 336. Equitable terms should always be offered.

In all disputes to which he is a party a sovereign should be animated by a sincere desire to do justice and to preserve peace. He is bound before taking up arms, and even after having done so, to offer equitable terms; and then only will his use of force be justified when his enemy remains obstinate and refuses to listen to the appeal of justice or equity.

§ 337. Right of the possessor, in a doubtful case.

It is for the claimant to prove his right, for he must show the justice of his claim to a thing which he does not possess. He must have a title, and his title need not be respected unless its validity is proved. Hence the possessor may remain in possession until it is shown that his possession is unjust. So long as that is not done he is justified in maintaining his possession, and even in recovering it by force if he has been deprived of it. Hence a claimant is not allowed to take up arms to obtain possession of a thing to which he has only an uncertain or doubtful right. He can only oblige the possessor, even by force of arms if necessary, to confer upon the subject, to accept some reasonable means of deciding upon or adjusting the conflicting claims, or finally to compromise upon an equitable basis (§ 333).

§ 338. How reparation for an injury should be sought.

If the subject of the dissension is an injury that has been received, the offended party should follow the rules we have just laid down. His own interest and that of human society oblige him to attempt, before having recourse to arms, pacific means of obtaining reparation for the injury, or due satisfaction, unless there are good reasons to dispense him from resorting to such measures (§ 334). Such moderation and prudence is all the more proper, and even as a rule indispensable, since the act which we consider an injury does not always proceed from an intention to offend us and sometimes is rather due to mistake than to malice. Indeed, it often happens that the injury is done by subordinate officers without their sovereign having any part in it; and when this is the case it is natural to presume that due satisfaction will not be refused. When certain subordinate officers not long ago violated the territory of Savoy in order to capture a famous leader of a band of smugglers, the King of Sardinia made complaint to the Court of France; and Louis XV did not consider it beneath his dignity to send an ambassador extraordinary to Turin to make atonement for the offense. Thus was an affair of so delicate a nature terminated in a manner equally honorable to the two Kings.

§ 339. Retaliation.

When a Nation can not bring the other party to do it justice, whether for a wrong or for an injury, it may seek justice for itself. But before recourse is had to war, of which we shall treat in the following Book, there are various measures in use among Nations, and of them it remains for us to speak here. Among such means of obtaining satisfaction is what is called the *law of retaliation*, according to which the offender is made to suffer precisely as much evil as he has himself inflicted. Many persons have praised this law as being based upon the strictest justice, and need we be surprised if they have proposed it to princes when they have even dared to make it a law of God himself? The ancients called it the law of Rhadamanthus. This idea is derived merely from the vague and mistaken notion by which evil is represented as essentially and in its own nature deserving of punishment. We have shown above (Book I, § 169) what is the true source of the right to punish;(*a*)

(*a*) Nam, ut Plato ait, nemo prudens punit quia peccatum est, sed ne peccetur. (Seneca, De Ira.)

whence we deduced what was the true and just measure of punishments (Book I, § 171). Let us say, then, that a Nation may punish a State which has done it an injury, as we have shown above (see Chapters IV and VI of this Book), if the latter refuses to make due satisfaction; but it has not the right to extend the punishment beyond what its own safety requires. *Retaliation*, unjust as it is between individuals, would be much more unjust as practised between Nations, in that the punishment could with difficulty be imposed upon those who had inflicted the evil. What right have you to cut off the nose and ears of the ambassador of a barbarian sovereign who has treated your own ambassador in that manner? As for those reprisals in time of war which are of the nature of *retaliation*, they are justified upon other principles, and we shall speak of them in their place. What truth there is in this idea of *retaliation* is that, circumstances being in other respects equal, the punishment should bear some proportion to the evil inflicted; for this rule is imposed by the very object and justification of punishments.

§ 340. Various ways of punishing without having recourse to arms.

It is not always necessary to have recourse to arms in order to punish a Nation; the offended State may, by way of punsihment, take away certain rights which the other enjoyed in its territory, or, if it has the means of doing so, it may seize certain property belonging to the other and retain it until due satisfaction has been made.

§ 341. Retorsion.

When a sovereign is not satisfied with the way in which his subjects are treated by the laws and customs of another Nation, he is at liberty to announce that he will follow the same policy, with respect to the subjects of that Nation, which that Nation is following with respect to his subjects. This is what is called *retorsion*, and it is in every way in keeping with justice and sound statesmanship. No one can complain when he is treated in the same way in which he treats others. Thus, the King of Poland, Elector of Saxony, enforces the law of escheat only against the subjects of those princes who subject the Saxons to it. *Retorsion* may also be used with respect to certain regulations which can not justly be complained of, which we must even approve of, but the effects of which it is proper to guard against by imitating them. Of such character are regulations respecting the importation or exportation of certain commodities or merchandise. On the other hand, it is often good policy not to use retorsion. Each Nation must be guided in the matter by its own prudence.

§ 342. Reprisals.

Reprisals are resorted to between Nation and Nation in order to obtain justice when it can not otherwise be had. If a Nation has taken possession of what belongs to another, if it refuses to pay a debt, to repair an injury, or to make due satisfaction, the latter may seize something belonging to that Nation and may turn the object to its own advantage to the extent of what is due to it, together with interest and damages, or it may hold the object as security until full satisfaction has been made. The latter case is rather one of attachment or seizure than of reprisal, but the cases are often confounded in ordinary language. Property thus seized is held intact so long as there is any hope of obtaining satisfaction or justice. When that hope no longer exists the property is confiscated, and then reprisal takes place. If the two Nations pass from disagreement to open rupture, satisfaction is considered as refused as soon as war is declared or hostilities begin, and thereupon the attached property may be confiscated.

§ 343. What is requisite to render reprisals lawful.

The Law of Nations permits reprisals only when the case is a manifestly just one or where the debt is definite and undeniable; for where the claim is of doubtful validity the claimant can not at first demand anything more than a fair investigation of his right. In the next place, before resorting to reprisals, justice must have been asked for in vain, or at least there must have been good reason to think that the demand for it would be ineffectual. Then only may one obtain justice for himself of the offender. It would be too incompatible with the peace, the repose, and the safety of Nations, with their mutual commerce and with all the duties which bind them to one another, that each of them should be warranted in having recourse to force immediately without finding out whether the other party is disposed to render justice or to refuse it.

But to make this point clearer it must be observed that if our adversary in a dispute either refuses to take the steps necessary to show the justice of his claim, or insidiously evades them, if he does not lend himself in good faith to pacific methods of settling the dispute, and above all if he is the first to have recourse to force, he thereby justifies our claim which before was doubtful, so that we can now resort to reprisals and seize his property in order to force him to adopt the methods of settlement which the Law of Nature prescribes. It is a last resort before coming to open war.

§ 344. Upon what property reprisals are made.

We have observed above (§ 81) that the property of the citizens constitutes part of the sum total of the wealth of the Nation; that, as between State and State, whatever belongs to the members individually is considered as belonging to the body and is answerable for the debts of the body (§ 82); whence it follows that in reprisals the property of the subjects is seized just as that of the State or of the sovereign would be. Whatever belongs to the State is subject to reprisals whenever the property can be seized, provided that it be not held on deposit as a public trust. Property of this last kind happens to be in our hands as a result of the confidence which the owner had in our good faith, and it should therefore be respected even in case of open war. This is the rule observed in France, England, and elsewhere with respect to money invested by foreigners in the public stocks.

§ 345. The state should compensate those who suffer by reprisals.

A sovereign who resorts to reprisals against a Nation by seizing the property of its citizens indiscriminately can not be blamed for taking the property of an innocent person to satisfy a debt due from another, for in such a case it is the part of the sovereign to compensate his subject whose property has been thus seized. Loss by reprisal constitutes a State or National debt, of which each citizen should pay no more than his quota.

§ 346. The sovereign alone can order reprisals to be made.

It is only between State and State that the property of individual subjects is regarded as belonging to the Nation. Sovereigns negotiate their affairs between themselves; they treat with one another directly and can look upon a foreign Nation only as a society of men whose interests are wholly in common. Hence it belongs to sovereigns alone to make use of and to authorize reprisals, on the grounds that we have just explained. Besides, this use of force comes very near to open rupture and is often followed by it. It is therefore of too serious a nature to be left to the initiative of private individuals. Accordingly we see that in every civilized State a subject who thinks he has been injured by a foreign Nation applies to his sovereign to obtain permission to make use of reprisals. This is what is called in France a request for *letters of marque*.

§ 347. Reprisals may be used against a nation for the acts of its subjects; and may be used by a nation in favor of its own injured subjects.

Reprisals may be resorted to against a Nation not only for acts of the sovereign but also for those of his subjects; and this is the case when the State or the sovereign participates in the act of the subject and assumes the responsibility of it. This can be done in several ways, as we have shown in Chapter VI of this Book.

Likewise the sovereign demands justice, or resorts to reprisals, not only in his own interest but in that of his subjects, whom he must protect and whose cause is the cause of the Nation.

§ 348. But reprisals may not be used in favor of foreigners.

But to grant reprisals against a Nation in favor of foreigners is to set oneself up as a judge between that Nation and those foreigners—a step which no sovereign has the right to take. Reprisals can only be undertaken where the cause is a just one; they must even be based upon a denial of justice which has either already taken place or which there is good reason to apprehend (§ 343). Now, what right have we to judge if the complaint of a foreigner against an independent State is a just one, or if there has been a real denial of justice? If it be answered that we can properly take up the quarrel of another State in a war that appears to us to be just, and give help to it, and even ally ourselves with it, the case is different. In giving help against a Nation we do not detain its property or its subjects that happen to be within our territories in reliance on the public faith; and in declaring war against that Nation we allow it to withdraw its subjects and its property, as we shall show later. In the case of reprisals granted to our own subjects, a Nation can not complain that we are violating the public faith in seizing its subjects or its property, because our duty of protecting its subjects or its property is justly contingent on the supposition that that Nation will not on its part violate, with respect to us or our subjects, the rules of justice which Nations must observe towards one another; if it violates them we are justified in obtaining satisfaction, and the method of reprisals is easier, safer, and more moderate than that of war. But reprisals granted in favor of foreigners can not be justified on the same grounds, for the protection which we owe to the subjects of a State is not conditioned by the protection which that State will give to the subjects of all other States, to persons who are not citizens of our State, and who are not under our protection. When England, in 1662, granted reprisals against the United Provinces in favor of the Knights of Malta, Holland said with good reason that, according to the Law of Nations, reprisals could only be granted in order to uphold the rights of the subjects of the State and not in cases where the State had no concern in the matter.(*a*)

§ 349. Those who have given cause for reprisals should compensate those who suffer by them.

The individuals who by their acts have given cause for just reprisals are obliged to compensate those whose property is seized and the sovereign should compel them to do so, for we are bound to repair the harm which has been caused by our fault; and although the sovereign, by refusing justice to the offended party, may have brought the reprisals upon his subjects, those who are the original cause of them do not become thereby the less guilty; the fault of the sovereign does not exempt them from the necessity of repairing the consequences of their own misdeeds. However, if they were ready to make satisfaction to the injured or offended party, and were prevented from doing so by their sovereign, they are only bound to do what they would have been obliged to do in order to prevent the reprisals, and it is the duty of the sovereign to repair the additional damage which is the result of his own fault (§ 345).

§ 350. What may be considered a refusal of justice.

We have said (§ 343) that reprisals should only be resorted to when justice can not be otherwise obtained. Now, justice may be refused in several ways: (1) By an outright denial of justice or by a refusal to hear the complaints of a State or of its subjects or to allow the subjects to assert their rights before the ordinary tribunals. (2) By pretended delays, for which no good reason can be given; delays equivalent to a refusal or even more injurious than one. (3) By a decision manifestly unjust and one-sided. But the injustice must be evident and unmistakable. In all cases open to doubt a sovereign should not entertain the complaints of his subjects against a foreign tribunal nor undertake to exempt them from the effect of a decision rendered in due form, for by so doing he would give rise to con-

---

(*a*) See Bynkershoek, *De Foro Legatorum*, Cap. XXII, § 5.

tinual disturbances. The Law of Nations prescribes that States shall mutually respect in this manner the jurisdiction of one another's courts, for the same reason that the civil law of each State requires that every final decision rendered in due form shall be regarded as just. The obligation is neither so express nor so extended as between Nation and Nation; but it can not be denied that it is greatly conducive to their peace, and in full accord with their duties towards human society, to oblige their subjects, in all doubtful cases where the wrong done them is not manifest, to submit to the decisions of the foreign courts before which their cases have been tried. (See above, § 84.)

§ 351. Subjects arrested by way of reprisal.

Just as a sovereign can seize the property of a Nation in order to force it to do justice, he can also, for the same purpose, arrest certain of its citizens and hold them until he has received full satisfaction. This is what the Greeks called *Androlepsia*,(*a*) a seizure of men. At Athens the law allowed the relatives of one who had been murdered in a foreign country to seize as many as three citizens of that country and to hold them in custody until the murderer had been either punished or delivered up.(*b*) But in modern European practice this method is hardly ever resorted to, except to obtain satisfaction for an injury of a like nature; that is to say, in order to compel a sovereign to release someone whom he unjustly holds in custody.

However, since the subjects thus detained are only held as a security, a pledge, in order to force a Nation to do justice, if their sovereign persists in refusing it we can not take away their lives nor inflict upon them any corporal punishment for a denial of justice of which they are not guilty. Their property, and even their liberty, may be pledged for the debts of the State, but not their lives, of which man has not the right to dispose. A sovereign has the right to take away the lives of subjects of a State which has done him an injury only in time of war; and we shall see elsewhere what it is that gives him that right.

§ 352. Right against those who resist reprisals.

But a sovereign is justified in using force against those who resist the carrying out of his right, and in using it to the extent necessary to overcome their unjust resistance. Hence he may overcome those who attempt to resist his just reprisals, and if to do so it is necessary to take away their lives, the blame for that misfortune can only be laid upon their unjust and unreasonable resistance. Grotius would have us rather abstain from reprisals in such a case.(*c*) As between individuals, and when the matter at issue is not of extreme importance, it is certainly worthy not only of a Christian, but in general of every high-minded man, rather to abandon his right than to kill one who offers unjust resistance to its enforcement. But the case is not the same as between sovereigns; the consequences would be too serious if they let themselves be defied. To consider the true and just welfare of the State is the great rule; but the rulers of Nations can only use it in so far as is consistent with the welfare and safety of their people.

§ 353. Just reprisals do not constitute a proper cause for war.

Having shown that reprisals may be resorted to when justice can not otherwise be obtained, the conclusion can easily be drawn that a sovereign is not justified in resisting with force or in making war upon a sovereign who, in authorizing and executing reprisals under such circumstances, is only acting upon his right.

§ 354. A sovereign should confine himself to reprisals, and only proceed to war as a last resort.

And as the law of humanity enjoins Nations, no less than individuals, ever to prefer gentler methods of obtaining justice when they are sufficient, whenever a sovereign can, by means of reprisals, obtain just compensation or suitable satisfaction, he should confine himself to that method, as being less violent and less disastrous than war. In this connection I can not avoid noticing here an error which is too general to be entirely overlooked. If it should happen that a prince, having cause to complain of some injustice or some acts in the nature of hostilities,

---

(*a*) Ἀνδροληψία. (*b*) Demosthenes, *Orat. adv. Aristocrat.* (*c*) *De Jure Belli et Pacis*, Lib. III, Cap. II, §6.

and not finding his adversary disposed to give him satisfaction, determines, before coming to an open rupture, to use reprisals in an attempt to force him to listen to the voice of justice; if, without a declaration of war, he seizes his property, hi vessels, and holds them as security—certain persons are heard to cry out that this is robbery. If this prince had immediately declared war they would have had nothing to say; they would perhaps have praised his conduct. Strange forgetfulness of reason and right principles! It is like saying that Nations should follow the laws of chivalry, challenge each other in the lists, and settle their quarrel like two champions in a duel. Sovereigns should make it their policy to maintain the rights of their State and to see that justice is done them, using lawful means and preferring always the most pacific ones; and, let us repeat it, it is quite clear that the reprisals of which we speak are an infinitely more pacific and less disastrous means of obtaining justice than war. But as they often lead to it when the States involved are of nearly equal strength, they should never be made use of except as a last resort. Under such circumstances the prince who adopts that method, instead of coming to an open breach, is certainly deserving of praise for his moderation and his prudence.

Those who take to arms without necessity are scourges of the human race, barbarians, enemies of society, and violators of the laws of nature, or rather of the laws of the common Father of men.

There are cases, however, in which reprisals would be unjust when even a declaration of war would not be so; and it is precisely in such cases that Nations can with justice take to arms. When the quarrel involves not an act of violence or an injury received, but a disputed right, after conciliatory or pacific methods of obtaining justice have been attempted in vain, a declaration of war should properly follow and not pretended reprisals, which in such a case would only be real acts of hostility without a declaration of war, and would be contrary to the public faith, as well as to the mutual duties of nations. This will appear more clearly when we set forth the reasons which give rise to the obligation to declare war before commencing hostilities.(*a*)

But if through peculiar circumstances and through the obstinacy of an unjust adversary neither reprisals nor any of the methods of settlement just referred to are sufficient for the protection of our rights, there remains the sad and unfortunate expedient of war, which will form the subject of the following Book.

(*a*) See Book III, Chap. IV.

THE LAW OF NATIONS.

BOOK III.

War.

CHAPTER I.

War; the Various Kinds of War; the Right to Make War.

§ 1. Definition of war.

War is that state in which we prosecute our rights by force. The word is also taken to mean the act itself or the manner of prosecuting one's right by force. But it is more in accord with usage, and more suitable in a treatise on the law of war, to take the term in the sense we have given it.

§ 2. Public war.

Public war is that which takes place between Nations or sovereigns, which is carried on in the name of the public authority and by its order. It is public war of which we are to treat here. *Private war*, which takes place between individuals, belongs to the field of the natural law in its strict sense.

§ 3. The right to make war.

In treating of the right to security, we have shown that nature gives men the right to use force when it is needed for the defense and preservation of their rights. This principle is generally recognized; reason asserts it and nature itself has engraved it on the heart of man. Certain fanatics, it is true, taking literally the moderation recommended in the Gospel, have conceived the idea of letting themselves be slaughtered or plundered, rather than resist violence by force. But we need not fear that this error will make any great progress. The greater part of mankind will guard against it of their own accord, and it will be well if in doing so they manage to keep within the just limits which nature has set to a right granted only from necessity. To define precisely what these limits are, to moderate, by the rules of justice, equity, and humanity, the exercise of a right inherently severe and too often of necessary application, is the object of this third book.

§ 4. It belongs only to the sovereign power.

Since nature gives men the right to use force only when it is needed for the defense and preservation of their rights (Book II, § 49, and foll.), it is easy to infer that after the establishment of civil societies, a right, involving such dangers in its exercise, no longer belongs to individuals, except on those occasions when the society can not protect or assist them. Within the State itself the public authority settles all the disputes of the citizens, represses violence and self-redress. If an individual wishes to prosecute his rights against the subject of a foreign power, he may apply to the sovereign of that subject, or to the officers who exercise the public authority; and if he does not obtain justice, he should turn to his own sovereign, who is bound to protect him. It would be too dangerous to leave to each citizen the right to obtain justice from foreigners by force; there would not be a single citizen who might not draw his nation into war. And how could nations preserve peace among themselves if each individual had the power to disturb it? The right to decide whether a nation has a just subject of complaint, whether the circumstances are such as to justify the use of armed force, whether prudence will allow such action to be taken, or whether the welfare of the State requires it, this right, I say, is one of so important a nature that it can belong only to the body of the nation, or to the sovereign who represents it. It is clearly one of those rights without which the State can not be properly governed, and which are called the prerogatives of kingship (Book I, § 45).

It is the sovereign power alone, therefore, which has the right to make war. But as the various rights constituting that power, which ultimately resides in the body of the Nation, can be separated or limited, according to the will of the Nation

(Book I, §§ 31 and 45), it is in the individual constitution of each State that we must look to find where is located the authority to make war in the name of the State. The Kings of England, whose power is in other respects so limited, have the right to declare war,(*a*) and to make peace. The Kings of Sweden have lost it. The brilliant but ruinous exploits of Charles XII more than justified the Estates of the Kingdom in reserving to themselves a right of such importance to their safety.

§ 5. Defensive and offensive war.

War is either *defensive* or *offensive*. A State which takes up arms to repel the attack of an enemy carries on a *defensive* war. A State which is the first to take up arms, and which attacks a nation living at peace with it, carries on an *offensive* war. The purpose of defensive war is simple, namely, self-defense; the purpose of offensive war varies according to the different interests of nations, but in general it relates either to the enforcement of certain rights or to their protection. A sovereign attacks a nation, either to obtain something to which he lays claim or to punish the nation for an injury he has received from it or to forestall an injury which it is about to inflict upon him, and avert a danger which seems to threaten him. I am not now speaking of the justice of war; that will form the subject of a separate chapter. My object here is merely to point out in general the various purposes for which war is carried on—purposes which may furnish lawful reasons or unjust pretexts, but which are at least capable of being construed as just. For this reason I do not offer conquest or the desire to usurp the property of another as one of the purposes of offensive war; such a purpose, lacking even the semblance of right, is not the object of formal war, but of brigandage, of which we shall speak in its proper place.

(*a*) I speak of the abstract right. But as a King of England can neither raise money nor force his subjects to take to arms without the consent of Parliament, his right to make war comes to very little if Parliament does not provide the means of carrying it on.

CHAPTER II.

Instruments of War; the Raising of Troops, etc.; Army Officers or the Subordinate Authorities in the Conduct of War.

§ 6. The instruments of war. The sovereign is the real author of war, which is made in his name and at his command. The troops, both officers and soldiers, and in general all those persons by whom the sovereign carries on war, are only instruments in his hands. They execute his will and not their own. Arms, and all the apparatus used in war, are instruments of a lower order. It is important, in view of questions which will come up later on, to determine precisely what are the things which belong to war. Without entering into details here, we may say that whatever articles are used especially for war should be classed as instruments of war, and articles, such as provisions, which are equally of use at all times, belong to peace, except on those special occasions when it is seen that they are directly destined for the support of war. Arms of all kinds—artillery, gunpowder, saltpeter and sulphur (of which gunpowder is made), ladders, gabions, tools, and all the apparatus for a siege, materials for building ships of war, tents, uniforms, etc., are all regular instruments of war.

§ 7. The right to raise troops. Since war can not be carried on without soldiers, it is clear that whoever has the right to make war has naturally also the right to raise troops. This latter right, therefore, likewise belongs to the sovereign (§ 4), and is one of the royal prerogatives (Book I, § 45). The power of raising troops, of setting an army on foot, is of too great consequence in a State to be intrusted to any other person than the sovereign. Subordinate officials are not invested with it; they exercise it only by order of or commission from the sovereign. But they do not always need an express order. On urgent occasions, when it is impossible for them to await orders from the highest authority, the governor of a province, or the commander of a fortified town, can raise troops for the defense of the town or province committed to his care; and they do so by virtue of the power impliedly given them by their commission to be used on occasions of this kind.

I say that this important power belongs to the sovereign; it is an attribute of sovereignty. But we have seen above that the rights which taken together constitute sovereignty can be divided (Book I, §§ 31 and 45), if the Nation so desire it. It may happen, therefore, that the nation has not confided to its ruler a right so dangerous to its liberty as that of raising an army and keeping it on foot, and that it has limited at least the exercise of that right by making it dependent upon the consent of its representative assembly. The King of England, who has the right to make war, has also, it is true, the right of granting commissions for the raising of troops; but he can not force anyone to enlist, nor maintain an army on foot, without the consent of Parliament.

§ 8. Obligation of citizens or subjects. Every citizen is bound to serve and defend the State as far as he is able. Society can not be otherwise preserved; and this union for common defense is one of the first objects of all political association. Whoever is able to bear arms must take them up as soon as he is commanded to do so by the one who has the power to make war.

§ 9. The enlistment or raising of troops. In former times, and especially in small States, as soon as war was declared every man became a soldier; the entire people took up arms and carried on the war. Soon a choice was made, and armies were formed of picked men, the rest of the people keeping to their ordinary occupations. At the present day the custom of having regular armies prevails almost everywhere, and especially in the large States. The public authority raises soldiers, distributes them into different divisions under the command of generals and other officers, and maintains them as long as it sees fit. Since every citizen or subject is obliged to serve the State, the sovereign has the right, when the necessity arises, to conscript whom he pleases. But he should choose only persons suited to bearing arms, and it is good policy for him to choose, as far as possible, only those who, as volunteers, enlist without compulsion.

§ 10. Whether any persons are exempt from bearing arms.

No one is naturally exempt from bearing arms in the service of the State, for the obligation of every citizen is the same. Those alone are exempt who are incapable of bearing arms, or of enduring the hardships of war. On this ground, old men, children, and women are exempted. Although there may be found women as strong and brave as men, that is not usual; and rules are necessarily general in character, and are based upon conditions which ordinarily prevail. Besides, women are needed for other duties of society, and, in short, the mingling of the two sexes in armies would result in too many inconveniences.

As far as is possible, a good government should employ all the citizens and distribute duties and offices in such a way that the State, in all its affairs, may be most effectively served. Hence, when not under pressure of necessity, it should exempt from the army all those who are engaged in functions either useful or necessary to society. For this reason magistrates are ordinarily exempt; they have not more than enough time for the administration of justice and the maintenance of good order.

The clergy can not naturally, and as a matter of right, claim any special exemption. To defend one's country is a duty not unworthy of the most sacred hands. The law of the church which forbids ecclesiastics to shed blood is a convenient device for dispensing from the duty of fighting persons who are often ready to fan the flame of discord and to provoke bloody wars. In truth, the same reasons which we have just put forth in favor of the exemption of magistrates should cause the exemption of such of the clergy as are really useful—those who are engaged in teaching religion, in governing the church, and in celebrating public worship.(*a*)

But as for that huge crowd of useless persons who, under the pretext of consecrating themselves to God by the vows of religion, in fact give themselves up to a life of idleness and ease—on what ground do they claim an exemption that is ruinous to the State? If the Prince exempts them from bearing arms, does he not wrong the rest of the citizens, upon whom the burden is shifted? I do not mean by this to advise a sovereign to fill his armies with monks, but merely that he should gradually lessen the number of a useless class of men by taking away from them harmful and ill-founded privileges. History tells of a warlike bishop(*b*) who fought with a club, so that, by beating his enemies to death, he might avoid violating the law against shedding their blood. It would be more reasonable, while dispensing monks

---

(*a*) In former times, bishops, as holders of fiefs, went to war at the head of their vassals. The Danish bishops did not neglect an office which pleased them more than the peaceful cares of the episcopate. The famous Absalon, Bishop of Roschild and afterwards Archbishop of Lunden, was the leading general of Waldemar I. And when the custom of regular armies put an end to this feudal service, warlike prelates have aspired to the command of armies. Cardinal de la Valette, and Sourdis, Archbishop of Bordeaux, appeared in arms under the ministry of Richelieu, who himself did the same at the attack of the pass of Susa. All this is an abuse which the church rightly opposes. A bishop is more properly to be found in his diocese than in the army; and in these days sovereigns are not lacking in generals and officers who are better fitted for military duties than ecclesiastics are. In general, let every man follow the duties of his calling. I only deny to the clergy exemption as of right, and in those cases when their presence is necessary.

(*b*) A bishop of Beauvais, under Philip Augustus. He fought at the battle of Bouvines.

from bearing arms, to employ them in the fortifications, and thus relieve the soldiers. Many of them have thus given their services zealously, when the need arose. I could cite more than one famous siege in which monks have given useful service in the defense of their country. When the Turks laid siege to Malta, ecclesiastics, women, and even children all contributed, according to their respective strength or ability, to that glorious defense which baffled all the efforts of the Ottoman Empire.

There is another class of drones whose exemption is an even more crying abuse—I mean those crowds of useless footmen who fill the houses of the rich and the great, men whose occupation is to display the luxury of their masters, and who are thereby themselves corrupted.

§ 11. Pay and quarters of soldiers.

Among the Romans, so long as every man served in the army in his turn, soldiers received no pay. But once special men are chosen, once standing armies are maintained, the State must give them pay, for no one owes more than his proportionate share of service to the State; and if the ordinary revenues do not suffice for the purpose, special taxes must be levied to make up what is needed. It is fair that those who do not serve should pay their defenders.

When a soldier is not in the field it is necessary to provide him with quarters. This burden falls naturally upon householders, but, as it is attended with many inconveniences and is very annoying to the citizens, it is the part of a good prince, of a wise and just government, to relieve them from it as far as possible. With this object in view the King of France has generously built barracks in many towns as quarters for the garrison.

§ 12. Hospitals and homes for invalid soldiers.

The homes prepared for soldiers and poor officers who have grown gray in the service, and who are prevented by weakness or wounds from providing for their wants, can be regarded as a part of military expenses. The magnificent institutions in France and England for disabled soldiers and sailors mark the honorable performance by the sovereign and the nation of a sacred duty. The care of these unfortunate victims of war devolves necessarily upon the State, in proportion to its power. It is repugnant to humanity and is even contrary to the strictest justice to allow generous and heroic citizens, who have shed their blood for the safety of their country, to perish from want or be forced unbecomingly to beg their bread. The honorable duty of maintaining them might be properly imposed upon the rich monasteries and great ecclesiastical benefices. It is entirely fair that citizens who avoid all the dangers of war should employ a part of their wealth for the relief of their valiant defenders.

§ 13. Mercenary soldiers.

Mercenary soldiers are foreigners who voluntarily enter into the service of the State for a stipulated pay. As they are not subjects of the sovereign they owe him no service in that capacity, and consequently the pay he offers them is the motive of their service. By their contract they bind themselves to serve him, and the Prince on his part agrees to certain conditions set down in the terms of enlistment. These terms are the rule and measure of the respective rights and obligations of the contracting parties, and they should be scrupulously observed. The complaints of certain French historians against the Swiss troops, who on various occasions have refused to march against the enemy, and have even withdrawn from service because they were not paid—those complaints, I say, are as absurd as they are unjust. On what ground is a contract to be more binding upon one of the parties than upon the other? When the Prince fails to keep his part of the contract the foreign soldiers are under no further obligations to him. I confess that it would be ungenerous to forsake a prince who by some accident and without any fault on his part, is temporarily prevented from making payment. Circumstances might even occur in which an inflexible demand for pay would be, if not strictly unjust, at least opposed to equity. But this has never been the case with the Swiss. They have never quit service at the first payment overdue; and when they have found a sovereign sincerely desirous to pay them, but actually unable to do so, their patience and their zeal have always kept them faithful to him. Henry IV owed them immense sums, but they never forsook him in his greatest necessity, and that brave man found the Swiss Nation as generous as it was courageous.

I mention the Swiss in this connection because, in fact, they were often mere mercenaries. But troops of that sort are not to be confused with the Swiss who at the present day serve various powers with the permission of their sovereign and in virtue of alliances existing between those powers and the Swiss Confederation or some individual canton. These latter troops are real auxiliaries, although paid by the sovereign whom they serve.

The question has been much discussed whether the profession of a mercenary soldier be legitimate or not, whether individuals may, for money or other rewards, engage as soldiers in the service of a foreign prince? The question does not seem to me very difficult of solution. Those who enter into such contracts without the express or implied consent of their sovereign are wanting in their duty as citizens. But when the sovereign leaves them at liberty to follow their inclination for the profession of arms, they become free in that respect. Now, every free man may join whatever society pleases him best and seems most to his advantage, and may make common cause with it and take up its quarrels. He becomes in some measure, at least for a time, a citizen of the State into whose service he enters; and as ordinarily an officer is free to leave the service when he thinks fit, and a private soldier at the expiration of his term, if that State should enter upon a war that is manifestly unjust, the foreigner may leave its service. Such mercenary soldiers, by learning the art of war, will render themselves more capable of serving their country, if ever it has need of them. This last consideration furnishes us the answer to a question proposed at this point: Can the sovereign properly allow his subjects to serve foreign powers indiscriminately as mercenaries? He can, and for this simple reason—that in this way his subjects learn an art the knowledge of which is both useful and necessary. The tranquillity, the profound peace which Switzerland has so long enjoyed in the midst of wars which have agitated Europe, would soon become disastrous to her if her citizens did not enter into the service of foreign princes and thereby train themselves in the art of war and keep alive their martial spirit.

§ 14. Conditions under which they are to be enlisted.

Mercenary soldiers enlist freely. A sovereign has no right to use constraint with respect to foreigners; he should not even resort to deceit or stratagem to lead them to enter into a contract which, like every other, should be founded upon good faith.

§ 15. Recruiting in foreign countries.

As the right to raise troops belongs solely to the Nation, or to the sovereign (§ 7), no one may recruit soldiers in a foreign country without the permission of the sovereign; and even with such permission only volunteers may be enlisted. For there is no question here of serving one's country, and no sovereign has the right to give or sell his subjects to another.

Those who undertake to enlist soldiers in a foreign country without the permission of its sovereign, and in general all who entice away the subjects of another, violate one of the most sacred rights of the sovereign and the Nation. The crime is that of kidnaping, and it is punished severely in all well-governed States. Foreign recruiters are hanged without mercy, and justly so. It is not presumed that their sovereign has commanded them to commit a crime, and even though they had received orders from him they should not have obeyed them, for a sovereign has no right to command things contrary to the natural law. It is not presumed, I say, that these recruiters act under orders from their sovereign, and it is ordinarily thought sufficient to punish, when they can be caught, those who have used no other means than enticement. If they have used violence a request is made for their extradition, when they have escaped, and for the return of the men whom they have carried off. But if the State is certain that they are acting under orders, it is justified in regarding such an aggression on the part of a foreign sovereign as an injury, and as a proper ground for declaring war, unless suitable reparation be made.

§ 16. Obligations of soldiers.

All soldiers, whether subjects or foreigners, must take oath to serve faithfully and not to desert the service. Independently of any oath, their obligation is the same, whether because of their character as subjects or because of their contract as mercenaries. Their fidelity is a matter of such importance to the State that too great precautions can not be taken to secure it. Deserters merit the most severe punishment, and the sovereign may even make desertion a capital offense, if he deem it necessary. Agents who persuade soldiers to desert are much more guilty than the recruiters of whom we have just spoken.

§ 17. Military laws

Good order and obedience, at all times so useful, are nowhere so necessary as in an army. The sovereign should determine the precise duties and rights of the various grades of the army—soldiers, officers, division commanders, generals; he should regulate and define the authority of officers of every rank, the penalties attached to offenses, the procedure of trials, etc. The laws and ordinances relating to these various matters form the military code.

§ 18. Military discipline.

The regulations whose special object is to maintain order in the army and to put it in condition for useful service constitute what is called military discipline. It is a matter of the highest importance. The Swiss were the first of modern nations to restore it in full vigor. Good discipline, united with the bravery of a free people, produced, from the early days of the Republic, those brilliant exploits which astonished all Europe. Machiavelli says that *the Swiss are the leaders of Europe in the art of war.*(a) In our times the Prussians have shown what can be expected from good discipline and careful training. Soldiers gathered from every quarter have accomplished, as a result of regular drill and prompt obedience, all that could be hoped for from the most devoted subjects.

§ 19. Subordinate officers in war.

Every army officer, from the corporal to the general, enjoys the rights and the authority which have been conferred upon him by the sovereign; and the will of the sovereign in this respect is manifested by his express declarations, contained either in the commissions he delivers or in the military code, or is deduced, by a just inference, from the nature of the duties intrusted to each officer. For every man holding an office is presumed to possess whatever authority he needs for the fulfillment of his office and for the proper performance of his duties.

Thus the commission of the commander-in-chief, when it is unqualified and unlimited, gives him an absolute power over the army, the right to direct its movements as he thinks proper, to undertake such operations as he finds adapted to the welfare of the State, etc. It is true that his power is often limited, but the case of Marshal Turenne shows clearly enough that, when the sovereign is certain of having made a good choice, he will do well to give the general unlimited power. If the Duke of Marlborough had been dependent in his movements upon the orders of the Cabinet it is doubtful whether all his campaigns would have been crowned with such brilliant success.

(a) Discourse on Livy.

When a governor is besieged in the town over which he has command, and all communication is cut off with his sovereign, he is by that very fact invested with all the authority of the State, as far as regards the defense of the town and the safety of the garrison. Our statements on this subject must be carefully attended to, since they set forth the principle for determining what the various commanders, who are the subordinate or inferior officers in war, have authority to do. In addition to the conclusions which can be drawn from the very nature of their functions, it is necessary in this matter to consult custom and received usage. If it is known that with a certain Nation the officers of a certain rank are regularly invested with such and such powers, it can be reasonably presumed that the officer with whom we treat is invested with the same powers.

§ 20. How far their promises bind the sovereign.

Every promise made by a subordinate officer who is at the head of his department, within the terms of his commission, and in conformity with the power naturally conferred upon him by his office and by the duties put upon him—all such promises, I say, are, for the reasons just set forth, made in the name and by the authority of the sovereign, and bind him just as if he had made the promises himself. Thus a governor may arrange terms of capitulation for the town and the garrison, and the sovereign can not invalidate what has been agreed upon. In the late war the general commanding the French at Lintz agreed to withdraw his troops to this side of the Rhine. Governors of towns have often promised that during a certain period the garrison should not bear arms against the enemy to whom they had capitulated; and these capitulations have been faithfully observed.

§ 21. In what cases their promises bind only themselves.

But if the subordinate officer goes further and exceeds the authority of his office, his promise amounts to no more than a personal agreement, termed *sponsio*, of which we have treated above (Book II, Chap. XIV). Of such character was the promise of the Roman consuls at the Caudine Forks. They could properly agree to deliver hostages, to make the army pass under the yoke, etc., but they had not the power to conclude peace, as they took care to notify the Samnites.

§ 22. A subordinate officer who assumes an authority which does not belong to him.

If a subordinate officer assumes an authority which does not belong to him, and thus deceives the person who treats with him, even though an enemy, he is naturally held responsible for the damage caused by his fraud, and is bound to repair it. I say, even though the person deceived be an enemy; for the faith of treaties should be observed even between enemies, as all men of principle will agree, and as we shall prove later on. The sovereign of this officer who has acted in bad faith should punish him and oblige him to make reparation for his fault; this is a duty which he owes to justice and to his own honor.

§ 23. The acts of subordinate officers are binding upon their inferiors.

Subordinate officers, in making agreements, bind those who are subject to their control, with respect to all matters concerning which they have the power and right to give commands. For with respect to those things they are invested with the authority of the sovereign, which their inferiors are bound to respect in their person. Thus, in a capitulation the governor of the town enters into terms with regard to the garrison, and even with regard to the magistrates and the citizens.

CHAPTER III.

The Just Causes of War.

§ 24. War should not be entered upon without the most urgent reasons.

Whoever knows what war really is, whoever will reflect upon its terrible effects and disastrous consequences, will readily agree that it should not be undertaken without the most urgent reasons for doing so. Humanity revolts against a sovereign who, without necessity or without pressing reasons, wastes the blood of his most faithful subjects and exposes his people to the calamities of war, when he could have kept them in the enjoyment of an honorable and salutary peace. When to this inconsiderateness, this want of love for his people, he adds the injustice towards those whom he attacks, of what crime, or rather of what dreadful series of crimes, does he not render himself guilty? Answerable for all the evils which he brings down upon his subjects, he is responsible also for all those which he inflicts upon an innocent people—the bloodshed, the pillaging of towns, the ruin of provinces—such are his crimes. Not a man is killed nor a hut burned but he is responsible before God and answerable to humanity for them. The violence, the crimes, the disorders of every sort which accompany the confusion and the license of war are a stain upon his conscience, and are laid to his account, since he is the original cause of them. Would that this feeble picture might touch the rulers of Nations and create in them, with respect to their military undertakings, a circumspection in keeping with the serious consequences of their acts.

§ 25. Grounds justifying war, and motives for waging it.

If men were always reasonable they would settle their quarrels by an appeal to reason; justice and equity would be their rule of decision, their judge. The method of settling disputes by force is a sad and unfortunate expedient to be used against those who despise justice and refuse to listen to reason; but, after all, it is a method which must be adopted when all others fail. A wise and just Nation, a good ruler, will only use it as a last resort, as we have shown in the last chapter of Book II. The reasons which may determine him to resort to force are of two kinds: certain ones show that he is justified in making war, that he has lawful grounds for it, and they are called *justifying grounds;* the others are based upon the expediency and appropriateness of the step, and they indicate whether it is advisable for the sovereign to undertake war; they are called *motives*.

§ 26. What constitutes in general a just ground of war.

The right to use force, or to make war, is given to Nations only for their defense and for the maintenance of their rights (§ 3). Now, if anyone attacks a Nation or violates its perfect rights, he does it an *injury*. Then, and then only, has that Nation the right to resist him and bring him to reason; it has also the right to prevent an injury when it sees itself threatened with one (Book II, §50). We may say, therefore, in general, that the foundation or the cause of every just war is an injury, either already received or threatened. The justifying grounds of war show that a State has received an injury, or that it sees itself seriously enough threatened to authorize it to ward off the injury by force. However, it is clear that we are speaking here of the principal party to the war, and not of those who take part in it as auxiliaries.

When, therefore, there is question whether a war is a just one, we must consider whether he who enters upon it has actually received an injury or whether he is really threatened with one; and in order to know what should be regarded as an injury, we must understand what are a Nation's *rights* in the strict sense, what are its *perfect* rights. These are many in number and various in kind, but they can all be referred to the general heads of which we have already treated and of which we shall treat further in this work. Whatever constitutes an attack upon these rights is an *injury* and a just cause of war.

§ 27. What war is unjust.

By a direct inference from the principles just laid down it follows that if a Nation takes up arms when it has not received an injury and when it has not been threatened, it wages an unjust war. That Nation alone has the right to make war to which an injury has been done or is about to be done.

§ 28. The object of war.

From the same principles we likewise deduce the purpose or lawful object of every war, which is *to avenge or to prevent an injury.* To avenge signifies here to seek reparation for an injury if it be of a nature to be repaired, or just satisfaction if the evil be irreparable; it includes also, if the case demand it, the punishment of the offender with the object of providing for our future security. The right to security authorizes us to take such steps (Book II, §§ 49–52). Hence we can lay down clearly this three-fold object of lawful war: (1) to obtain what belongs to us, or what is due to us; (2) to provide for our future security by punishing the aggressor or the offender; (3) to defend ourselves, or to protect ourselves from injury, by repelling unjust attacks. The first two points are the object of offensive war, the third is the object of defensive war. Camillus, when about to attack the Gauls, set forth in brief to his soldiers all the grounds upon which war can be justified: *omnia quæ defendi, repetique, et ulcisci fas sit.* (a)

§ 29. War should not be undertaken unless the justifying grounds are supported by proper motives.

Since the Nation, or its ruler, must not only be guided by justice in all its undertakings, but must also act with an eye to the welfare of the State, war should not be undertaken unless the justifying grounds are supported by proper and commendable motives. The grounds show that the sovereign has a right to take up arms, that he has just cause for war; the proper motives indicate that it is expedient, that it is advisable, in the case in hand, for him to use his right; they bear upon the question of prudence, whereas the justifying grounds relate to justice.

§ 30. Proper motives and evil motives.

I call *proper and commendable* motives those which are drawn from the welfare of the State, from the safety and the common good of the citizens. They are not to be separated from the justifying grounds, for an act in violation of justice can never be really beneficial to the State. Though an unjust war may enrich a State for a time, though it may extend the boundaries of the State, it makes the State an object of dislike to other Nations and exposes it to the danger of being overcome by them. And besides, is it always wealth and extent of territory that constitute the happiness of States? Many examples to the contrary could be cited, but we shall confine ourselves to the Romans. The Roman Republic destroyed itself by its victories, by the excess of its conquests and of its power. When Rome, though mistress of the world, came under the control of tyrants and under the yoke of military government, she had reason to deplore the success of her arms and to regret the happy times when her power did not extend beyond Italy; nay, even when her dominion was almost confined to the circuit of her walls.

Evil motives are all those which do not relate to the welfare of the State, which are not drawn from that pure source, but are suggested by the violence of passion. Of such a nature is the ambition to command, the display of strength, the thirst for riches, lust for conquest, hatred, vengeance.

§ 31. War where the grounds are just, but the motives evil.

All the rights of a Nation, and consequently of a sovereign, are derived from the welfare of the State, and should be measured according to that rule. The obligation to advance and maintain the true welfare of the society, of the State, gives the Nation the right to take up arms against one who threatens or actually attacks that precious possession. But if, when it has received an injury, a Nation is led to take up arms, not from the necessity of obtaining just reparation, but from some evil motive, it abuses its right, and the evil motive is a stain upon its sword, which might have been unsullied, for now the war is not undertaken for the lawful cause for which it might have been undertaken, and the cause is no longer more than a pretext. As for the sovereign in particular, the ruler of the Nation, what right has he to imperil the safety of the State, and the lives and property of its citizens, for the mere gratification of his passions? The supreme power was confided to him only for the welfare of the Nation; he should make use of it with that object in view; that is the end prescribed for his least important measures, and shall he be led to undertake the most important and most dangerous ones from motives inconsistent with or contrary to that great end? Nothing is more common, however, than an unhappy reversal of this attitude; and it is noteworthy that, for this reason, the judicious Polybius classes as *causes*(*a*) of war the motives which lead one to undertake it, and as *pretexts*(*b*) the justifying grounds which warrant it. Thus he says that the cause of the war carried on by the Greeks against the Persians was the knowledge which they had of the weakness of the Persians, and that Philip, and Alexander after him, asserted as a pretext the desire of avenging the injuries which Greece had so often received and of providing for its safety for the future.

(a) Livy, Lib. v, Cap. XLIX.

§ 32. Pretexts.

However, let us hope for better things from Nations and their rulers. There are just causes of war, grounds which really justify it; and why should there not be found sovereigns who sincerely act upon those grounds when they have in addition reasonable motives for taking up arms? Hence we shall term *pretexts* the grounds which are given in justification, but which have only the appearance of validity, or which are even entirely destitute of foundation. We may also term *pretexts* grounds which are actually real and well-founded, but which, not being of sufficient importance to justify war, are only put forth as a cover for ambitious designs or some other evil motive. Such was the complaint of the Czar Peter I that proper honors had not been shown him at his passage by Riga. I do not remark here upon his other grounds for declaring war against Sweden.

Pretexts are, at the least, a homage which the unjust render to justice. He who hides behind them gives evidence that he still has a sense of shame. He does not declare open war upon all that is sacred in human society. He tacitly confesses that flagrant injustice merits the indignation of all men.

§ 33. War undertaken solely for gain.

He who enters upon a war for motives of gain only, without justifying grounds, acts without any right, and wages an unjust war. And he who in fact has a just cause for taking up arms, but is nevertheless led to do so only from interested motives, can not, indeed, be accused of injustice, but he manifests perverse dispositions, and his conduct is reprehensible, being stained by the evil motive. War is so terrible a scourge that only strict justice, united with a degree of necessity, can warrant it and render it commendable, or at least put it above all reproach.

§ 34. Nations which make war without cause, and without apparent motives.

Nations which are always ready to take up arms when they hope to gain something thereby are unjust plunderers; but those who appear to relish the horrors of war, who wage it on all sides without reason or pretext, and even without other motive than their savage inclinations, are monsters, unworthy of the name of men. They should be regarded as enemies of the human race, just as in civil society persons who follow murder and arson as a profession commit a crime not only

---

(*a*) *Αἰτίαι.* Histor., Lib. III, Cap. VI. (*b*) *Προφάσεις.*

against the individuals who are victims of their lawlessness, but against the State of which they are the declared enemies. Other nations are justified in uniting together as a body with the object of punishing, and even of exterminating, such savage peoples. Of that character were various German tribes of which Tacitus speaks, and those barbarians who overthrew the Roman Empire. They retained their savage instincts long after their conversion to Christianity. Of that character were the Turks and other Tartars, Genghis Khan, Timur-bec or Tamerlane, scourges of God as Attila was, who made war for the mere pleasure of it. Such are, in the ages of refinement and among the most civilized Nations, those pretended heroes who find in combat nothing but pleasure, who make war from inclination and not from love of country.

§ 35. When defensive war is just or unjust.

Defensive war is just when it is carried on against an unjust aggressor. That needs no proof. Self-defense against an unjust attack is not only a right which every Nation has, but it is a duty, and one of its most sacred duties. But if the enemy, in carrying on an offensive war, has justice on his side, the Nation has no right to resist, and defensive war is then unjust. For the enemy is only acting on his right; he has taken up arms to obtain justice which was refused him; and it is an act of injustice to resist one who is exercising his right.

§ 36. How it may become just in resistance to an offensive war which originated in a just cause.

The only thing left to do in such a case is to offer due satisfaction to the invader. If he is unwilling to accept it, the State has the advantage of having won over justice to its side, and it may thenceforth justly resist his attack, which has now become unjust, since the grounds for it are removed.

The Samnites, driven on by the ambition of their leaders, laid waste the territory of the allies of Rome. On repenting of their excesses they offered reparation for the harm they had done, and every kind of reasonable satisfaction. But their submission could not appease the Romans; whereupon Caius Pontius, the Samnite general, said to his people: "Since the Romans are absolutely bent upon war, necessity makes our defense a just one; for war is just and proper for those who have no other resource." *Justum est bellum, quibus necessarium; et pia arma, quibus nulla nisi in armis relinquitur spes.*(*a*)

§ 37. Justice of an offensive war in a manifestly good cause.

In order to judge of the justice of an offensive war, we must first consider the nature of the cause for which a Nation takes up arms. A Nation should be perfectly certain of its right before enforcing it in so terrible a manner. Hence, if something evidently just is at stake, such as the recovery of its property, the enforcement of a certain and incontestable right, the obtaining of just satisfaction for an evident injury; and if justice can not be had otherwise than by force of arms, offensive war is permissible. Two things are therefore required to render it just: (1) Some right which is to be enforced, that is to say, a ground for demanding something of another Nation; (2) the inability to obtain the thing otherwise than by force of arms. Necessity is the sole warrant for the use of force. It is a dangerous and dreadful expedient. Nature, the common mother of men, only permits it as a last resort, where no other is possible. We do an injury to a Nation when we adopt violent measures before finding out whether it is disposed to give justice or to refuse it. Those who, without attempting pacific measures, immediately take to arms for the least grievance, show clearly enough that the justifying grounds are for them merely pretexts; they eagerly seize the opportunity of giving rein to their passions and of gratifying their ambition under some semblance of right.

§ 38. And in a doubtful cause.

In a doubtful cause, where uncertain, obscure, and disputable rights are at issue, all that can be reasonably asked of a Nation is that the matter be discussed (Book II, § 331), and if it is impossible to clear it up, that the dispute be settled by

---

(*a*) Livy, Lib. ix, init.

a fair compromise. If, therefore, one of the parties refuses to adopt these methods of settlement, the other will be justified in taking up arms to enforce a compromise. It must be carefully noted, however, that war does not decide the question; victory merely constrains the conquered State to accede to the treaty which settles the dispute. It is an error no less absurd than pernicious to say that war should decide controversies between those who, like Nations, acknowledge no superior judge. Victory is ordinarily on the side of strength and skill rather than on that of justice. It would be a bad rule of decision; but it is an efficacious means of constraining one who refuses a settlement according to justice, and it becomes just in the hands of the prince who employs it properly and in a lawful cause.

§ 39. War can not be just on both sides.

War can not be just on both sides. One party claims a right, the other disputes the justice of the claim; one complains of an injury, the other denies having done it. When two persons dispute over the truth of a proposition it is impossible that the two contrary opinions should be at the same time true.

§ 40. When it must nevertheless be considered legitimate.

However, it can happen that the contending parties are both in good faith; and in a doubtful cause it is, moreover, uncertain which side is in the right. Since, therefore, Nations are equal and independent (Book II, § 36, and Introd., §§ 18, 19), and can not set themselves up as judges over one another, it follows that in all cases open to doubt the war carried on by both parties must be regarded as equally lawful, at least as regards its exterior effects and until the cause is decided. That does not prevent other Nations from passing judgment on the question for themselves in order to decide what their attitude must be and to assist the Nation which appears to them to be in the right; nor does this consequence of the independence of Nations save the author of an unjust war from the guilt of his act. But if his conduct is the result of invincible ignorance or error, the injustice of the war is not to be imputed to him.

§ 41. War undertaken with the object of punishing a nation.

When offensive war has for its object the punishment of a Nation it should be founded, like every other war, upon right and upon necessity. (1) Upon right: a real injury must have been received, since an injury alone is a just ground of war (§ 26); a State has the right to seek reparation for it, or if it be of an irreparable nature, a case for punishment is presented, and a State is authorized to provide for its own safety, and for that of other Nations as well, by inflicting upon the offender a punishment which will serve both as a correction and as an example. (2) A war of this kind must be justified by necessity; that is to say, in order to be lawful, it must be the only means of obtaining just satisfaction, which implies a reasonable assurance as to the future. If this complete satisfaction is offered, or if it can be obtained without war, the injury is wiped out, and the right to security no longer authorizes the State to seek vengeance. (See Book II, §§ 49–52.)

The Nation at fault should submit to the punishment it has merited, and suffer it by way of atonement. But it is not obliged to yield itself up to the discretion of an angry enemy. When, therefore, it sees itself attacked, it should offer satisfaction, inquire what is demanded of it by way of punishment, and if the hostile State will not set forth its complaint, or if it seek to impose too severe a penalty, the Nation has the right to resist, and its defense becomes lawful.

Moreover, it is clear that the injured party alone has the right to punish independent persons. We will not repeat here what we have said elsewhere (Book II, § 7) concerning the dangerous error or the extravagant pretense of those who assume the right to punish a Nation for faults which do not concern them; men who, senselessly setting themselves up as defenders of the cause of God, undertake to punish the depravity of morals or the irreligious life of a people who are not committed to their care.

§42. Whether the aggrandizement of a neighboring power can authorize a state to make war upon it.

We are here presented with a celebrated question which is of the greatest importance. It is asked whether the aggrandizement of a neighboring State, in consequence of which a Nation fears that it will one day be oppressed, is a sufficient ground for making war upon it; whether a Nation can with justice take up arms to resist the growing power of that State, or to weaken the State, with the sole object of protecting itself from the dangers with which weak States are almost always threatened from an overpowerful one. The question presents no difficulties to the majority of statesmen; it is more perplexing for those who seek at all times to unite justice with prudence.

On the one hand, a State which increases its power by all the efforts of a good government does nothing but what is praiseworthy; it fulfills its duties towards itself and does not violate those which it owes to other Nations. The sovereign who by inheritance, by a free election, or by any other just and proper means, unites new provinces or entire kingdoms to his States, is merely acting on his right, and wrongs no one. How would it be right to attack a State which increases its power by lawful means? A Nation must have received an injury, or be clearly threatened with one before it is authorized to take up arms as having a just ground for war (§§ 26, 27). On the other hand, we know only too well from sad and frequent experience that predominant States rarely fail to trouble their neighbors, to oppress them, and even to subjugate them completely, when they have an opportunity of doing so with impunity. Europe was on the point of being enslaved for lack of timely opposition to the growing power of Charles V. Must we await the danger? Must we let the storm gather strength when it might be scattered at its rising? Must we suffer a neighboring State to grow in power and await quietly until it is ready to enslave us? Will it be time to defend ourselves when we are no longer able to? Prudence is a duty incumbent upon all men, and particularly upon the rulers of Nations, who are appointed to watch over the welfare of an entire people. Let us try to solve this important question conformably to the sacred principles of the Law of Nature and of Nations. It will be seen that they do not lead to weak scruples, and that it is always true to say that justice is inseparable from sound statesmanship.

§ 43. Alone and of itself, it can not give the right.

First of all, let us observe that prudence, which is certainly a virtue very necessary in sovereigns, can never counsel the use of unlawful means in order to obtain a just and praiseworthy end. Do not object here that the welfare of the people is the supreme law of the State; for the welfare of the people, the common welfare of Nations, forbids the use of means that are contrary to justice and honor. Why are certain means unlawful? If we look at the matter closely, if we go back to first principles, we shall see that it is precisely because the introduction of such means would be hurtful to human society, a source of evil to all Nations. Note in particular what we said in treating of the observance of justice (Book II, Chap. V). It is, therefore, to the interest and even to the welfare of all Nations that we must hold as a sacred principle that the end does not justify the means. And since war is only permissible in order to redress an injury received, or to protect ourselves from an injury with which we are threatened (§ 26), it is a sacred rule of the Law of Nations that the aggrandizement of a State can not alone and of itself give any one the right to take up arms to resist it.

§ 44. How the appearance of danger gives this right.

Supposing, then, that no injury has been received from that State, we must have reason to think ourselves threatened with one before we may lawfully take up arms. Now, power alone does not constitute a threat of injury; the will to injure must accompany the power. It is unfortunate for the human race that the will to oppress can almost always be believed to exist where there is found the power to do so with impunity. But the two are not necessarily inseparable; and the only right which results from the fact that they ordinarily or frequently go together is that first appearances may be taken as a sufficient proof. As soon as a State has given evidence of injustice, greed, pride, ambition, or a desire of domineering over its neighbors, it becomes an object of suspicion which they must guard against. They may hold it up at the moment it is about to receive a formidable addition to its power, and demand securities of it; and if it hesitates to give these, they may prevent its designs by force of arms. The interests of Nations have an importance quite different from the interests of individuals; the sovereign can not be indolent in his guardianship over them; he can not put aside his suspicions out of magnanimity and generosity. A Nation's whole existence is at stake when it has a neighbor that is at once powerful and ambitious. Since it is the lot of men to be guided in most cases by probabilities, these probabilities deserve their attention in proportion to the importance of the subject-matter; and, if I may borrow a geometrical expression, one is justified in forestalling a danger in direct ratio to the degree of probability attending it, and to the seriousness of the evil with which one is threatened. If the evil in question be endurable, if the loss be of small account, prompt action need not be taken; there is no great danger in delaying measures of self-protection until we are certain that there is actual danger of the evil. But suppose the safety of the State is endangered; our foresight can not extend too far. Are we to delay averting our destruction until it has become inevitable? If we trust too readily to appearances, it is the fault of our neighbor who has given evidence of his ambition in various ways. Had Charles II, King of Spain, instead of settling the succession upon the Duke of Anjou, appointed Louis XIV himself as heir, had he thus tamely suffered the union of the House of Spain to that of France, it would have meant, according to all the rules of human foresight, nothing less than delivering all Europe into servitude, or at least putting it in a most precarious condition. But if two independent Nations think fit to unite so as to form thenceforth but one Empire, have they not the right to do so? Who would be justified in opposing them? I answer, they have the right to unite, provided that in doing so they have no designs prejudicial to other Nations. Now, if each of these two Nations was able to govern and support itself unaided, and to protect itself from insult and oppression, it is reasonably presumed that their only object in uniting to form one State was to dominate over their neighbors; and on occasions where it is impossible or too dangerous to wait until we are fully certain, we can justly act upon a reasonable presumption. If an unknown man takes aim at me in the middle of a forest I am not yet certain that he wishes to kill me; must I allow him time to fire in order to be sure of his intent? Is there any reasonable casuist who would deny me the right to forestall the act? But presumption becomes almost equal to certitude if the Prince who is about to acquire enormous power has already given evidence of an unbridled pride and ambition. In the imaginary case mentioned above, who would have dared counsel the European States to allow Louis XIV to make such a formidable addition to his power? Too well convinced of the use he would have made of it, they would have united together in opposition to it, and the right of self-protection would have justified their action. To say that they should have allowed him time to strengthen his hold upon Spain and consolidate the union of the two monarchies, and that, from fear of doing him injustice, they should have quietly awaited until he had overwhelmed them—would not this be denying men the right to be guided according to the rules of prudence and to act on probabilities, and would it not be depriving them of the power of providing for their safety until they should have mathematical proof that it was in danger? It would be idle to preach such doctrines. The principal sovereigns of Europe, habituated, by the ministry of Louvois, to dread the power and the designs of Louis XIV, carried their mistrust so far that they were unwilling to permit a prince of the House of France to sit upon the throne of Spain, although he was called to it by the Nation, which approved of the will of its late King. He ascended the throne in spite of the efforts of those who feared so greatly his elevation; and events have proved that their policy was too suspicious.

§ 45. Another more evident case.

It is still easier to prove that if this formidable sovereign should betray unjust and ambitious dispositions by doing the smallest wrong to another State, all Nations may profit by the opportunity, and together join forces with the injured State in order to put down the ambitious Prince and disable him from so easily oppressing his neighbors, or from giving them constant cause for fear. For a State which has received an injury has the right to provide for its future security by depriving the offender of the means of doing harm; and it is permissible, and even praiseworthy, to assist those who are oppressed or unjustly attacked. All this is sufficient to put statesmen at their ease, and to relieve them of any fear that in standing for strict justice in this matter they would be following the path to slavery. There is perhaps no case in which a State has received a notable increase of power without giving other States just grounds of complaint. Let all Nations be on their guard to check such a State, and they will have nothing to fear from it. The Emperor Charles V made of religion a pretext for oppressing the Princes of the Empire and subjecting them to his absolute authority. If he had taken advantage of his victory over the Elector of Saxony and brought that great plan to completion, the liberties of all Europe would have been in danger. Hence it was with good reason that France assisted the Protestants of Germany; justice permitted her to do so, and the care for her own safety required it. When the same Prince took possession of the Duchy of Milan, the sovereigns of Europe should have aided France in disputing his right to it, and should have taken advantage of the opportunity to reduce his power to proper limits. If they had made use of the just grounds which he soon gave them to unite against him, they would not afterwards have had to fear for their liberties.

§ 46. Other means, always allowable, of guarding against a powerful State.

But suppose that this powerful State is both just and prudent in its conduct and gives no ground of complaint; are we to regard its progress with an indifferent eye? Are we idly to look upon its rapid increase of power and imprudently lay ourselves open to the designs which its power may inspire in it? Certainly not. Careless indifference would be unpardonable in a matter of such great importance. The example of the Romans is a good lesson for all sovereigns. If the most powerful States of that day had united together to watch over the movements of Rome, to set limits to her progress, they would not have successively become subject to her. But force of arms is not the only means of guarding against a formidable State. There are gentler means, which are always lawful. The most efficacious of these is an alliance of other less powerful sovereigns, who, by uniting their forces, are enabled to counterbalance the sovereign who excites their alarm. Let them be faithful and steadfast in their alliance, and their union will insure the safety of each.

They have also the right mutually to favor one another, to the exclusion of the sovereign whom they fear; and by the privileges of every sort, and especially by the commercial privileges which they will mutually grant to one another's subjects, and which they will refuse to the subjects of that dangerous sovereign, they will add to their strength, and at the same time lessen his, without giving him reason for complaint, since every one may dispose freely of his favors.

§ 47. Political balance of power.

Europe forms a political system in which the Nations inhabiting this part of the world are bound together by their relations and various interests into a single body. It is no longer, as in former times, a confused heap of detached parts, each of which had but little concern for the lot of the others, and rarely troubled itself over what did not immediately affect it. The constant attention of sovereigns to all that goes on, the custom of resident ministers, the continual negotiations that take place, make of modern Europe a sort of Republic, whose members—each independent, but all bound together by a common interest—unite for the maintenance of order and the preservation of liberty. This is what has given rise to the well-known principle of the balance of power, by which is meant an arrangement of affairs so that no State shall be in a position to have absolute mastery and dominate over the others.

§ 48. Means of maintaining it.

The surest means of preserving this balance of power would be to bring it about that no State should be much superior to the others, that all the States, or at least the larger part, should be about equal in strength. This idea has been attributed to Henry IV, but it is one that could not be realized without injustice and violence. And moreover, once this equality were established, how could it be regularly maintained by lawful means? Commerce, industry, the military virtues, would soon put an end to it. The right of inheritance, even in favor of women and their descendants, which has been so absurdly established for succession to the throne, but which after all has been established, would overturn your arrangement.

It is simpler, easier, and more just to have recourse to the method just referred to, of forming alliances in order to make a stand against a very powerful sovereign and prevent him from dominating. This is the plan followed by the sovereigns of Europe at the present day. They look upon the two principal powers, who for that very reason are naturally rivals, as destined to act as a mutual check upon each other, and they unite with the weaker of the two, thereby acting as so much weight thrown into the lighter scale in order to make the balance even. The House of Austria has for a long time been the predominant power; now it is the turn of France. England, whose wealth and powerful navy have given her a very great influence, without, however, causing any State to fear for its liberty, since that power appears to be cured of the spirit of conquest—England, I say, has the honor to hold in her hands the political scales. She is careful to maintain them in equilibrium. It is a policy of great wisdom and justice, and one which will be always commendable, so long as she only makes use of alliances, confederations, and other equally lawful means.

§ 49. One who upsets the balance of power may be checked or even weakened.

Confederations would be a sure means of preserving the balance of power and thus maintaining the liberty of Nations, if all sovereigns were constantly aware of their true interests, and if they regulated their policy according to the welfare of the State. But powerful sovereigns succeed only too often in winning for themselves partisans and allies who are blindly devoted to their designs. Dazzled by the glitter of a present advantage, seduced by their greed, deceived by unfaithful ministers, how many princes become the instruments of a power which will one day swallow up either themselves or their successors. The safest plan, therefore, is either to weaken one who upsets the balance of power, as soon as a favorable opportunity can be found when we can do so with justice (§ 45), or, by the use of all upright means, to prevent him from attaining so formidable a degree of power. To this end all Nations should be on their guard above all not to allow him to increase his power by force of arms, and this they are always justified in doing. For if that prince wages an unjust war every Nation has the right to assist the oppressed State; and if he wages a just war, neutral Nations may interpose to bring about a settlement; they may persuade the weak State to offer just satisfaction upon reasonable terms, and may thus prevent it from being subjugated. When one who wages a just war is offered equitable terms, he has all that he can demand. As we shall see later, the justice of his cause never gives him the right to subjugate his enemy, except when this extreme measure becomes necessary to his safety, or when he has no other means of redressing an injury which he has received. Now, that is not the case here, for the Nations that intervene enable him both to insure his safety and to obtain just redress in another manner.

Finally, there is no question but that if that formidable prince is clearly entertaining designs of oppression and conquest, if he betrays his plans by preparations or other advances, other Nations have the right to check him; and if the fortune of war be favorable to them, they may profit by the favorable opportunity to weaken and reduce his strength, which upsets the balance of power and constitutes a menace to the common liberty of all.

This right on the part of Nations is still more evident as against a sovereign who is always ready to take to arms without cause and without plausible pretext, and who is thus a constant disturber of the public peace.

§ 50. Conduct permissible when a neighboring sovereign makes preparations for war.

This leads us to a special question which is closely connected with the preceding one. When, in the midst of profound peace, a neighboring sovereign constructs fortresses upon our frontier, fits out a fleet, increases his troops, assembles a powerful army, fills his magazines, in a word, when he makes preparations for war, are we allowed to attack him in order to ward off the danger with which we believe ourselves threatened? The answer depends in large part upon the personal character and moral qualities of our neighbor. We must inquire into the reason for his preparations and demand an explanation of them. This is the practice of European Nations; and if there be just cause to suspect his good faith, securities can be demanded from him. A refusal to grant them would be sufficient indication of evil designs and just grounds for preventing them. But if that sovereign has never given evidence of a base perfidy, and above all, if we have at the time no quarrel with him, why should we not quietly trust in his word, taking only such precautions as prudence renders indispensable? We should not unwarrantedly presume him capable of covering himself with infamy by adding the crime of perfidy to that of unjust attack. So long as his good faith is not open to suspicion, we have no right to demand any further security from him.

Still, it is true that if a sovereign continues to keep up a powerful army in time of profound peace, his neighbors can not rest entirely upon his word. Prudence obliges them to be on their guard. Although they may be absolutely certain of his good faith, unforeseen difficulties may arise; and shall they leave him the advantage of having in such an event a large and well-disciplined army, to oppose which they will have nothing but raw recruits? Certainly not, for that would be almost equivalent to putting themselves at his mercy. They are thus forced to imitate him and themselves keep up a large army. What a burden this puts upon a State! In former times, not to go back further than the last century, sovereigns rarely failed to stipulate in their treaties of peace that both sides should disarm; that they should disband their troops. If, in time of peace, a prince wanted to maintain a large standing army, his neighbors took suitable measures; they formed leagues against him and forced him to disarm. Why has that salutary custom not been kept up? The present large standing armies deprive the soil of cultivators, check the growth of population, and can only serve to oppress the liberties of the Nation which maintains them. Happy England! whose situation relieves her of the necessity of maintaining at great expense the instruments of despotism. Happy Switzerland! if by continuing to drill carefully her militia she is enabled to repel her foreign enemies, without supporting an idle soldiery who might one day oppress the liberties of the people and threaten even the lawful authority of the sovereign, of which the Roman legions furnish a striking instance. The wise custom which that free Republic has of training all its citizens in the art of war renders it respectable abroad, without subjecting it to vices at home. Its policy would have been followed by all other States if they had kept before them the public welfare as their sole object. We have now said enough on the general principles by which the justice of a war may be estimated. Those who understand well the principles, and who have just ideas of the various rights of Nations, will easily apply the rules to particular cases.

CHAPTER IV.

The Declaration of War, and War in Due Form.

§ 51. The declaration of war; its necessity.

It is only as a remedy against injustice that Nations have the right to make war, which is thus the result of unfortunate necessity. This remedy is so terrible in its effects, so disastrous to mankind, so hurtful even to him who makes use of it, that the natural law only allows it as a last resort, that is to say, when justice can be obtained in no other way. It has been shown in the preceding chapter that to be warranted in taking up arms it is necesssary, firstly, that we have a just ground of complaint; secondly, that the other party shall have refused to give reasonable satisfaction; thirdly, that the ruler of a Nation, as we have pointed out, should carefully consider whether it will be to the welfare of the State to prosecute his right by force of arms. But that is not enough. As it is possible that the fear of actual war on our part will make an impression upon the mind of our adversary, and force him to do us justice, we owe it to mankind, and above all to the lives and happiness of our subjects, to give notice to that unjust Nation, or to its ruler, that we are now going to have recourse to the final remedy and make use of open force in order to bring him to reason. This is what is called a *declaration of war*. It is illustrated in the method of precedure adopted by the Romans and embodied in their *fetial law*. First of all, the *pater patratus*, the head of the *fetial* college which was intrusted with negotiations relating to war, was sent to demand satisfaction of the Nation which had offended them, and if after the space of thirty-three days that Nation had not made proper answer, the ambassador returned home, saying that the Romans would take steps accordingly. The King, and afterwards the Consul, asked the advice of the Senate; and when war was determined upon the ambassador was sent back to the frontier to declare it.(*a*) It is surprising to find among the Romans conduct so just, so temperate, and so wise, at a time when we should have expected from them a ferocity equal to their valor. A Nation which regarded war in such a scrupulous attitude thereby laid solid foundations for its future greatness.

§ 52. What it should contain.

A declaration of war being necessary as a last effort to end the dispute without the shedding of blood, by making use of fear to bring the enemy to a sense of justice, it should at the same time proclaim our resolve to go to war and set forth our grounds for doing so. This is the regular practice of European powers at the present day.

§ 53. It is simple or conditional.

When justice has been demanded in vain, the sovereign may proceed to a *pure and simple* declaration of war. But in order not to have to take two steps he may, if he thinks fit, unite to his demand for justice (which the Romans called *rerum repetitio*) a *conditional* declaration of war by announcing that he will go to war if he does not obtain prompt satisfaction upon the matter at issue. By this means he makes a pure and simple declaration of war unnecessary; the conditional declaration is enough if the enemy does not give satisfaction without delay.

§ 54. The right to make war ceases upon the offer of just terms.

If, following either of these declarations of war, the enemy offers just terms of peace, the sovereign should refrain from hostilities; for as soon as justice is done him he is no longer warranted in having recourse to force, which he is only allowed to use when necessary to maintain his rights; provided, however, that the offer of just terms be accompanied by securities, for he is not obliged to let the enemy

---

(*a*) Livy, Lib. I, Cap. XXXII.

trifle with him by empty proposals. Where the offending sovereign has not shown himself to be untrustworthy, his good faith is sufficient security, and it should be accepted as such. As for the terms themselves in addition, to redress upon the chief ground of complaint, the injured sovereign is warranted in demanding indemnification for the expenditures he has been put to in making preparation for war.

§ 55 Formalities attending the declaration.

The declaration of war must be published to the State to which it is made. This is all that the natural law of Nations requires. However, if custom has introduced certain formalities, the Nations which, by adopting that custom, have given their implied consent to those formalities, are bound to observe them, so long as they have not made known their intention not to do so (Introd., § 26). In former times the European powers sent heralds, or ambassadors, to declare war; at present they content themselves with announcing it in their capital, in their principal towns, or upon the frontier. Manifestos are sent out, and now that communication has become so quick and easy owing to the establishment of a postal service, the news is soon spread on all sides.

§ 56. Further reasons necessitating the publication of the declaration.

In addition to the reasons we have advanced, publication of the declaration of war is necessary for the instruction and guidance of a State's own subjects, and in order to fix the date from which certain rights belonging to them in virtue of war are to begin, and in order to settle certain effects which the voluntary Law of Nations attributes to formal war. Without this public declaration of war it would be very difficult to determine, when the treaty of peace is drawn up, which acts are to be regarded as the effects of war and which may be classed as grievances, so that redress may be demanded for them. In the recent Treaty of Aix-la-Chapelle, between France and Spain on the one side and England on the other, it was agreed that all of the prizes taken by both parties before the declaration of war should be restored.

§ 57. Defensive war needs no declaration.

He who is attacked and only wages defensive war need make no declaration of it, for the declaration on the part of the opposing sovereign, or his open hostilities, are sufficient to set up a state of war. However, in these days a sovereign who is attacked hardly ever fails on his part to declare war, either to save his dignity, or for the guidance of his subjects.

§ 58. When the declaration may be omitted in an offensive war.

If the Nation with which a sovereign is determined to go to war is unwilling to admit his ambassador or herald to declare it, he may, in spite of custom to the contrary, content himself with publishing it in his own States, or upon the frontier; and if the declaration does not come to the knowledge of that Nation before the commencement of hostilities, it has only itself to blame. The Turks imprison and even maltreat the ambassadors of those Powers with which they have decided to go to war; it would be running a great risk for a herald to go into their midst to declare war. Their cruelty releases a State from the necessity of sending one.

§ 59. It may not be omitted by way of retaliation.

But no one is dispensed from a duty by the mere fact that someone else has not fulfilled his; hence we may not excuse ourselves from the necessity of declaring war against a Nation before commencing hostilities on the ground that, upon another occasion, that Nation attacked us without a declaration of war; for in doing so it violated the natural law (§ 51), and its offense does not justify us in committing a like one.

§ 60. Time at which the declaration is to be made.

The Law of Nations does not impose the obligation of declaring war for the sake of giving the enemy time to make ready for an unjust defense. Hence it is permissible to delay the declaration until we have arrived upon the frontier with an army, and even until we have entered the enemy's territory and have taken up an advantageous position therein; however, it must be made before actual hostilities have begun, for we thereby provide for our own safety and at the same time accomplish the object of the declaration of war, which is to give an unjust adversary a last opportunity of seriously considering his conduct and of avoiding the horrors of war by doing justice. The generous Henry IV acted thus towards Charles Emanuel, Duke of Savoy, who had worn out his patience by idle and fraudulent negotiations.(*a*)

§ 61. Duty of the inhabitants when a foreign army enters the country before declaring war.

If a sovereign, who thus enters foreign territory with an army kept under strict discipline, declares to the inhabitants that he does not come as an enemy, that he will commit no acts of violence, and that he will make known to the sovereign the cause of his coming, the inhabitants should not attack him, and if they attempt to do so he is warranted in punishing them. But they must not allow him to enter any strongholds, nor can he demand admission. The subjects should not commence hostilities without orders from their sovereign; but if they are brave and loyal they will, while awaiting orders, occupy the advantageous positions, and will defend themselves in case an attempt is made to drive them off.

§ 62. Commencement of hostilities.

After the sovereign who has thus entered the territory of the offending State has declared war, if just terms are not promptly offered him he may begin operations; for, we repeat, he is not obliged to let himself be trifled with. But in the application of these rules we must never lose sight of the principles laid down above (§§ 26, 51) with respect to the sole lawful grounds of war. For a sovereign to march with an army into a neighboring country, when he is not threatened by it, and when he has not tried, by an appeal to reason and justice, to obtain just redress for the grievances which he claims to have, would be to introduce a policy disastrous to mankind and subversive of the foundations of the peace and safety of Nations. If such a method of procedure be not condemned by the universal indignation of all civilized Nations, it will be necessary for them to remain armed and to be upon their guard as well in time of peace as during open and declared war.

§ 63. Conduct to be shown towards subjects of the enemy who happen to be in the country at the time of the declaration of war.

A sovereign who declares war can not detain the subjects of the enemy who happen to be in his States at the time of the declaration, nor can he seize their property. They came there in reliance upon the public faith; for in permitting them to enter his territory and to reside there the sovereign impliedly promised them full liberty and security for their return home. He should therefore allow them suitable time to withdraw with their property, and if they remain beyond the prescribed time he is warranted in treating them as enemies, though as unarmed enemies. But if they are unavoidably detained by sickness he must necessarily grant them a fair extension of the time, for the same reasons that a limited time was granted. Far from failing in this duty, at the present day sovereigns show even greater considerateness and frequently allow foreigners who are subjects of the enemy State full time to wind up their affairs. This practice is observed especially with respect to merchants, and it is also carefully provided for in treaties of commerce. The King of England has gone further still, and in his last declaration of war against France he ordained that all the French who happened to be in his territory should be allowed to remain and should be given full protection for their persons and their property, *provided their conduct was not improper*.

§ 64. Notification of the war; manifestos.

We have said (§ 56) that the sovereign should publish the declaration of war throughout his territory for the instruction and guidance of his subjects. He should also notify neutral powers of his declaration of war, in order to make known to them the justifying grounds of his action, the cause which obliges him to take

---

(*a*) See Sully's Memoirs.

up arms, and in order to inform them that such or such a Nation is his enemy, so that they can take steps accordingly. We shall see, when we come to treat of the subject, that this notification is also necessary to avoid all difficulty in connection with the right to seize certain goods which neutral traders are carrying to the enemy in time of war—goods which are called *contraband.* This publication of war might be called a *declaration,* while the notification made directly to the enemy might be termed a *denunciation,* following the Latin term *denunciatio belli.*

At the present day war is declared and notified by means of manifestos. These documents never fail to contain the grounds, good or bad, upon which a sovereign justifies his recourse to arms. The least scrupulous sovereign wishes to be considered just, fair, and peace-loving; he realizes that a contrary reputation might be hurtful to him. The manifesto embodying a declaration of war, or the declaration itself, if you like, printed, published, and circulated throughout the State, contains likewise the general orders which the sovereign gives to his subjects with respect to the war.

§ 65. Dignity and restraint which should be observed in manifestos.

Is it necessary in an age so enlightened to remark that in the documents which sovereigns publish relative to the war they should refrain from all offensive expressions which would indicate sentiments of hatred, animosity, and bitterness, and are only calculated to excite like sentiments in the hearts of the enemy. A prince should be most dignified both in his written and in his spoken language; he should respect himself in the person of his equals; and if he has the misfortune to have a quarrel with a Nation, shall he embitter the dispute by offensive expressions, and thus take away all hope of a friendly reconciliation? Homer's heroes call each other "drunkard" and "dog"; and they carried war to its utmost limit. Frederic Barbarossa and other Emperors, and the Popes their enemies, behaved no better. Let us be proud of our more gentle and considerate manners, and not look upon a forbearance, which produces such substantial results, as mere idle politeness.

§ 66. Characteristics of lawful war in due form.

These formalities, the necessity of which is deduced from the principles and from the very nature of war, characterize a *lawful war in due form* (*justum bellum*). Grotius(*a*) says that two things are necessary to constitute a *formal* war according to the Law of Nations: Firstly, that it be authorized on both sides by the sovereign authority, and secondly, that it be accompanied by certain formalities. These formalities consist in the demand for just redress (*rerum repetitio*) and in the declarration of war, at least on the part of the one who makes the attack; for in the case of defensive war there is no need for a declaration (§ 57), nor even, on urgent occasions, of an express order from the sovereign. In fact, these two conditions are necessary for a lawful war according to the Law of Nations; that is to say, such a war as Nations have the right to make. The right to make war belongs to the sovereign alone (§ 4), and it is only after he has been refused satisfaction (§ 37), and after he has first declared war (§ 51), that he has the right to take up arms.

A war in due form is also called a regular war, because it is carried on subject to certain rules either prescribed by the natural law or sanctioned by custom.

§ 67. It must be distinguished from irregular and unlawful war.

Lawful war in due form must be carefully distinguished from those irregular and unlawful wars, or rather marauding expeditions, which are carried on either without lawful authority or without apparent cause, as likewise without the proper formalities, and solely with the object of plunder. Grotius (Book III, Chap. III) relates many instances of such warfare. Of that character were the expeditions of the *Grandes-Compagnies* which were formed in France during the wars with the

---

(*a*) *De Jure Belli et Pacis,* Lib. I, Cap. III, § 4.

English, and which were mere armies of brigands, who overran Europe to pillage and destroy. Such were the cruises of the buccaneers, who had no commission, and who fought in time of peace; and such, in general, are the depredations of pirates. In this class must be put almost all the expeditions of the Barbary corsairs; although authorized by a sovereign, they are made without apparent grounds, and have no other object than the desire of booty. I repeat, these two kinds of warfare, lawful and unlawful, must be carefully distinguished, because they produce effects, and give rise to rights, very different in character.

§ 68. Basis of this distinction.

In order to understand the basis of this distinction we must recall the nature and the object of lawful war. The natural law only allows it as a remedy against stubborn injustice. That is the source, as we shall explain later, of the rights which war gives, and of the rules which must be observed in it. And as it is equally possible that either of the parties may be in the right, and as in consequence of the independence of Nations (§ 40), no one can decide between them, the position of the two enemies is the same, so long as the war lasts. Thus, when a Nation, or a sovereign, has declared war upon another sovereign because of a difference that has arisen between them, their war is what is called among Nations a lawful war in due form; and, as we shall show more in detail later on,(*a*) the effects of it are, by the voluntary Law of Nations, the same for both parties, independently of the justice of the cause. Nothing of this is true of irregular and unlawful war, which is more properly called brigandage. Undertaken without any right, and even without apparent grounds, it can give rise to no lawful effects, nor confer any rights upon the author of it. A Nation that is attacked by enemies of this sort is not under any obligation to observe towards them the rules belonging to formal war; it may treat them as outlaws. When the town of Geneva escaped from capture at the time of the famous escalade(*b*) it caused the prisoners taken from the Savoyards to be hanged like robbers in that they had attacked it without cause and without a declaration of war; nor was it blamed for doing so, although the act would have been reprobated in a formal war.

(*a*) Below, Chap. XII.

(*b*) In the year 1602.

CHAPTER V.

The Enemy and Enemy Property.

§ 69. Definition of the term "enemy."

An enemy is one with whom we are at open war. The Latins had a special term (*hostis*) to designate an enemy State, and they distinguished it from a private enemy (*inimicus*). Our language has only one term for the two classes of enemies, who should, however, be carefully distinguished. A private enemy is one who seeks to hurt us and who takes pleasure in doing so; an enemy State makes claims against us, or refuses ours, and maintains its rights, real or pretended, by force of arms. The former is never innocent of guilt; he is inspired by malice and hatred. On the other hand, it is possible that an enemy State may be free from such feelings of hatred, it may not wish us evil, and may be seeking merely to maintain its rights. This remark is necessary in order to regulate our attitude towards a public enemy.

§ 70. All the subjects of the two states at war are mutual enemies.

When the ruler of the State, the sovereign, declares war upon another sovereign, it is understood that the whole Nation is declaring war upon the other Nation; for the sovereign represents the Nation and acts in the name of the whole society (Book I, §§ 40, 41), and it is only as a body, as a unit, that one Nation can deal with another. These two Nations are therefore enemies, and all the subjects of one Nation are enemies of all the subjects of the other. In this respect custom is in accord with right principle.

§ 71. And they remain such wherever they are.

Enemy subjects remain such wherever they are. Their place of residence does not affect their status, which is determined by their political allegiance. So long as a man remains a citizen of his country he is the enemy of those with whom his Nation is at war. But we must not infer that these enemies may treat one another as such wherever they meet. A neutral prince, being master in his own territory, will not permit them to attack one another there.

§ 72. Whether women and children are to be counted as enemies.

Since women and children are subjects of the State and members of the Nation, they should be counted as enemies. But that does not mean that they may be treated as men who bear arms or are capable of doing so. We shall see that we have not the same rights against all classes of enemies.

§ 73. Enemy property.

When once it has been precisely determined who are the enemy, it is easy to decide what is enemy property (*res hostiles*). We have shown that not only the sovereign with whom we are at war is our enemy, but also his entire Nation, down to the women and children; all that belongs to that Nation, to the State, to the sovereign, to the subjects of every age and both sexes, constitutes enemy property.

§ 74. It remains such wherever it be found.

It is the same with property as with persons, enemy property remains such wherever it be found. But we must not infer, any more than in the case of persons (§ 71), that we have the right to treat enemy property as such in all places.

§ 75. Neutral property found with the enemy.

Since the character of property is determined not by the place where it is found, but by the person to whom it belongs, property belonging to neutrals, which is found in enemy territory or upon enemy vessels, is to be distinguished from enemy property. But it is for the owner to prove his title clearly; for, in the absence of such proof, it is naturally presumed that a thing belongs to the Nation in whose possession it is found.

§ 76. Lands held by foreigners in enemy territory. The preceding section refers to movable property. A different rule holds for landed property. As all lands belong in some sort to the Nation, being part of its dominions, of its territory, and under its sovereignty (Book I, §§ 204, 235; Book II, § 114), and as the owner of them is always a subject of the country, in his character as owner, property of this kind does not cease to be enemy property (*res hostiles*), although owned by a neutral. Nevertheless, at the present day, when war is carried on with so much moderation and considerateness, safeguards are given to houses and lands held by foreigners in the enemy country. For the same reason, a sovereign who declares war does not confiscate immovable property held in his territory by enemy subjects. In permitting them to acquire and to hold such property he has admitted them, to that extent, among the number of his subjects. But he may sequester the revenues from it, to prevent them from being transmitted to the enemy.

§ 77. Debts owing to the enemy by a third party. Enemy property includes incorporeal things—rights, titles, debts—with the exception, however, of those rights which have been granted by a third party, and in which the grantor is so far concerned that he is not indifferent as to who shall possess them, as, for example, commercial rights. But as rights, titles, and debts are not in that class, war gives us the same rights over sums of money which neutrals may owe to our enemy that it gives over other enemy property. Alexander, as conqueror and absolute master of Thebes, canceled in favor of the Thessalians a debt of a hundred talents which they owed to the Thebans.(*a*) The sovereign has naturally the same right over debts owing by his subjects to the enemy. He may therefore confiscate such debts if the payment falls due during the war; or at least he may forbid his subjects to pay such debts as long as the war lasts. But at the present day all the sovereigns of Europe have been led to be less rigorous on this point in the interest of promoting and protecting commerce. And once this relaxation has become the general custom, a sovereign who should act contrary to it would violate the public faith; for foreigners, in lending money, act on the firm persuasion that the general custom will be followed. The State does not even touch debts which it owes to the enemy; money lent to a State is everywhere exempt from confiscation and seizure in case of war.

(*a*) See Grotius, *De Jure Belli et Pacis*, Lib. III, Cap. VIII, § 4.

CHAPTER VI.

The Enemy's Allies; Leagues of War; Auxiliaries; Subsidies.

§ 78. Treaties relative to war.

We have sufficiently discussed treaties in general, and we shall not touch upon the subject here, except in so far as it relates particularly to war. Treaties which relate to war are of several sorts, and they vary in their objects and in their provisions according to the will of those who make them. All that we have said of treaties in general should be applied to them (Book II, Chap. XII, and foll.), and they may likewise be divided into real and personal, equal and unequal treaties, etc. But they are also specifically different from other treaties, in so far as they relate particularly to war.

§ 79. Defensive and offensive alliances.

Considered with reference to war, alliances are divided in general into *defensive* and *offensive alliances.* In the former a State merely promises to defend its ally in case the ally be attacked; in the latter the State unites with its ally in order to attack and together to carry on war against another Nation. Some alliances are both offensive and defensive, and it rarely happens that an alliance is offensive without being defensive also. But purely defensive alliances are quite common, and they are in general the more natural and lawful kind. It would be tedious and even useless to review in detail all the varieties of these alliances. Some are formed against all enemies without restriction; others make exception of certain States; others again are formed against this or that particular Nation.

§ 80. Difference between leagues of war and treaties promising assistance.

But it is important to note carefully the difference, especially in the case of defensive alliances, between an intimate and complete alliance, in which the allies agree to make common cause, and an alliance in which the allies merely promise each other a stated amount of help. An alliance in which the allies make common cause is a league of war; each of the parties sends all its forces to the front, each becomes a principal party to the war, and all have the same friends and the same enemies. But it is particularly when an alliance of this kind is offensive that it is called a league of war.

§ 81. Auxiliary troops.

When a sovereign, without taking a direct part in a war carried on by another sovereign, merely sends him help in the form of troops or vessels of war, these troops or vessels are called *auxiliaries.*

Auxiliary troops serve the prince to whom they are sent, in accordance with the orders of their sovereign. If they are sent to him without any conditions or restrictions they will be at his service equally for offensive or defensive war, and will be under obedience to him with respect to the duties they are to perform. However, they are not at the free and complete disposal of that prince, as if they were his subjects. They are granted to him only for his own wars, and he has not the right to send them himself as auxiliaries to a third State.

§ 82. Subsidies.

Sometimes this help which is given by a sovereign who does not take a direct part in the war consists in money, and it is then called a *subsidy*. At the present day the term is frequently taken in another sense, and signifies a sum of money which one sovereign annually pays to another in recompense for a body of troops which the latter furnishes him in his wars, or holds ready at his service. The treaties which stipulate for such troops are called *treaties of subsidy*. France and England have at present treaties of this kind with several princes of northern Europe and of Germany, and they continue them even in times of peace.

§ 83. When a nation may give help to another.

In order, now, to decide upon the morality of these various treaties or alliances, and their legality according to the Law of Nations, and the manner in which they should be carried out, we must first of all lay down this incontestable principle: *It is lawful and praiseworthy to assist in every way a Nation which is carrying on a just war; and such assistance even becomes a duty for every Nation which can give it without injury to itself. But no assistance may be given to one who wages an unjust war.* There is nothing here that can not be inferred from what we have said of the mutual duties of Nations towards one another (Book II, Chap. I). It is always commendable to assist a just cause when we can do so; but to aid an unjust Nation is to participate in its crime and to become ourselves guilty of injustice.

§ 84. And enter into an alliance for war.

If to the principle just laid down we add the consideration of what a Nation owes to its own safety, and of the care which it will naturally and properly take to put itself in a condition to resist its enemies, it will be all the more readily understood how clear a right it has to enter into alliances in view of war, and especially into defensive alliances whose object is merely to protect each Nation in the possession of what belongs to it.

But a Nation should use great caution in forming such alliances. Engagements by which a Nation may be drawn into war at the moment when it least expects it should not be entered into except for very important reasons and in view of the welfare of the State. We refer here to alliances which are made in time of peace as a provision for the future.

§ 85. Alliances made with a nation actually engaged in war.

If it be a question of forming an alliance with a Nation already engaged in war, or about to engage in war, two things are to be considered: (1) the justice of that Nation's cause; (2) the welfare of the State. If the war which a prince is waging, or is about to wage, is unjust, we are not allowed to enter into an alliance with him, since we may not give our aid to an unjust cause. But suppose that he has good grounds for going to war, we have then to consider whether the welfare of the State will allow us or induce us to take up his quarrel. For the sovereign should make use of his authority only for the welfare of the State; to that end should be directed all his undertakings, and especially the most important ones. What other consideration could warrant him in exposing his Nation to the calamities of war?

§ 86. Implied provision in every alliance looking to war.

Since a Nation may only give its assistance, or contract an alliance, for the support of a just war, every alliance, every league of war, every treaty of assistance, which is made beforehand in time of peace, and which has not in view any particular war, contains necessarily and inherently the implied provision that the treaty is to hold only for a just war. The alliance could not be validly contracted upon any other footing (Book II, §§ 161, 168).

But this principle must not be so interpreted as to reduce treaties of alliance to mere empty formalities. The implied reservation only holds where the war is evidently unjust; otherwise a pretext could always be found for invalidating treaties. Is there question of forming an alliance with a Nation actually engaged in war? You must conscientiously weigh the justice of its cause; the decision depends upon you alone, because you owe it no assistance except in so far as its cause is just and it is convenient for you to give it help. But when you are already bound to a Nation you can only be excused from helping it when its cause is clearly unjust; in a doubtful case you should presume that your ally is in the right, since the war is its undertaking.

But if you have serious doubts, you may very commendably interpose to effect a settlement. You may thus discover on which side the right lies, by finding out which of the contending parties is unwilling to accept just terms.

§ 87. Refusal to assist in an unjust war does not constitute a breach of the alliance.

Since every treaty of alliance contains the implied provision above mentioned, he who refuses to assist his ally in a war which is clearly unjust is not guilty of a breach of the alliance.

§ 88. What constitutes a *casus fœderis*.

When alliances have been thus formed in advance it becomes necessary to determine, when the occasion arises, whether the case in hand is one to which the alliance applies, so as to call upon us to abide by it. If the case is one to which the alliance does apply, it is called a *casus fœderis*. It exists when all the circumstances which the treaty was intended to meet are present, whether these circumstances were expressly specified in the treaty, or only implied. It is only when the *casus fœderis* arises that the promises made in the treaty of alliance have to be fulfilled.

§ 89. It never exists where a war is unjust.

Since the most solemn treaties can not bind us to support an unjust war (§ 86), the *casus fœderis* never exists where the injustice of the war is evident.

§ 90. When it exists where the war is defensive.

In a defensive alliance the *casus fœderis* does not arise the moment our ally is attacked. We must consider whether he has not given his enemy just grounds for attacking him; for in agreeing to defend him it was not our intention to put him in a position to insult others or to refuse them justice. If he is in the wrong we must induce him to offer reasonable satisfaction, and then only when his enemy is unwilling to accept the offer does the obligation of defending him arise.

§ 91. And where the treaty is one of guaranty.

But if the defensive alliance contains a guaranty to protect the ally in the possession of all the territory belonging to him at the time of the treaty, the *casus fœderis* arises as soon as that territory is invaded or threatened with invasion. If it is invaded for a just cause we must force our ally to give satisfaction, but we are justified in not permitting his lands to be taken away from him, for it is generally in the interest of our own security that we undertake to guarantee them. In addition, the rules of interpretation which we have given in a separate chapter(*a*) should be consulted in order to determine, on a given occasion, the existence of a *casus fœderis*.

§ 92. No help is due when the state is unable to furnish it, or when the safety of the state would be thereby endangered.

If the State which has promised help finds itself unable to give it, it is thereby released from the obligation of doing so; and if it could not give it without putting itself in evident danger it would be dispensed on that ground also. The case would be that of a treaty which is hurtful to the State, and therefore not binding (Book II, § 160). But we are speaking here of an imminent danger and one which threatens the very life of the State. The exception of such cases is impliedly and necessarily made in every treaty. As for remote or inconsiderable dangers, since they are inseparable from every alliance made in view of war, it would be absurd to claim that they should create an exception; the sovereign may expose his Nation to them in consideration of the advantages he obtains from the alliance.

Following these principles, a State is released from the obligation of sending help to its ally when it is itself engaged in a war which demands all its strength. If it is able to make a stand against its enemies and at the same time assist its ally, it has no excuse for not doing so. But in such cases it is for each State to determine what its circumstances and strength will allow it to do. The same rule holds for other things which a State may have promised, as, for instance, provisions. It is not obliged to furnish them to an ally when it has need of them for itself.

§ 93. Certain other cases. The case where two members of the same alliance go to war.

We shall not repeat here what we have said of certain other cases when speaking of treaties in general, as, for example, of the preference due to the older of two allies (Book II, § 167), and to a protector (*ibid.*, § 204), of the meaning which is to be given to the term "allies" in a treaty in which they are excepted from its provisions (*ibid.*, § 309). Let us merely remark upon this last point that in an alliance in which the parties agree to assist each other *against all enemies, their own allies*

(*a*) Book II, Chap. XVII.

excepted, the exception is to be understood only of such Nations as are allies of either party at the time the treaty was made. Otherwise it would be easy to escape the obligations of an earlier treaty by making new alliances; and it would be impossible to know either what was being accomplished or what was being gained by the conclusion of such a treaty.

The following case has not yet been mentioned: A treaty of defensive alliance exists between three sovereigns; two of them quarrel and go to war; how is the third to act? He is under no obligations to either, in virtue of the treaty; for it would be absurd to say that he has promised his help to each against the other, or to one of the two to the detriment of the other. The alliance therefore imposes no other obligation than that of interposing his good offices to bring about a reconciliation of his allies; and if the mediation be unsuccessful, he is at liberty to help the ally who seems to have justice on his side.

§ 94. Refusal of aid due by reason of an alliance.

To refuse to an ally the aid we owe him, when we have no good reason for not giving it, is doing him an injury, since it is a violation of the perfect right which we have given him by a formal agreement. I speak of evident cases, for it is in those only that his right is perfect; in doubtful cases it rests with us to decide what we are able to do (§ 92). But our decision must be well-founded, and made in good faith; and as we are under a natural obligation to repair the harm caused by our fault, and especially by an unjust act of ours, we are bound to indemnify an ally for whatever losses he has sustained from our unjust refusal. How careful we should be, therefore, in making engagements which, if unfulfilled, may cause us a material loss of honor or of property, and if fulfilled may produce the most serious consequences.

§ 95. The enemy's allies.

An engagement which may lead a Nation into war is one of a very momentous character, since nothing less than the very existence of the State is at stake. The sovereign who in an alliance promises a subsidy, or a body of auxiliary troops, sometimes thinks that he is merely risking a sum of money or a certain number of soldiers, whereas he often exposes himself to war and all its attendant calamities. The Nation against which he gives help will look upon him as its enemy, and if fortune favor its arms it will carry the war into his territory. But we must consider whether it can so do with justice, and on what occasions. Certain writers(*a*) lay it down as a general rule that whoever joins with our enemy, or assists him against us with money, troops, or in any other manner whatsoever, becomes thereby our enemy and gives us a right to make war against him. The rule is a cruel one and very hurtful to the peace of Nations. It can find no principles to support it, and happily is at variance with the practice of European States. It is true that every ally of my enemy is himself my enemy. It matters little whether a person makes war upon me directly and in his own name, or whether he does so under the flag of another. All the rights which war gives me against my principal enemy it gives against all his allies as well; for I derive those rights from the right to security, from the duty of self-defense; and the attack upon me is the same in either case. But the point is to determine whom I may lawfully account as allies of my enemy, united against me in war.

§ 96. Those who make common cause with the enemy are his allies.

First of all, I account as allies of my enemy all those who are in league with him and make common cause with him, although the war is carried on in his name as the principal party. This needs no proof. In the ordinary and acknowledged leagues of war, war is carried on in the name of all the allies, who are all enemies in equal degree (§ 80).

(*a*) See Wolf, *Jus Gentium*, §§ 730, 736.

§ 97. And those who help him without being under treaty obligation to do so.

In the second place, I account as allies of my enemy those who aid him in his war without being under treaty obligation to do so. Since of their own free will they come out against me, they are my enemies by choice. If they do no more than give him a definite amount of help, either by allowing certain troops to be raised or by advancing money, while maintaining with me in other respects all the relations of friendly or neutral Nations, I may overlook that ground of complaint, but I should be justified in calling them to account for it. This prudent caution in not always coming to an open break with those who give such help to an enemy, in order not to force them to support him with all their strength––this policy, I say, has gradually given rise to the custom of not regarding such assistance, especially when it consists in the mere permission to raise volunteer troops, as an act of hostility. How often have the Swiss granted levies of troops to France, and at the same time refused them to the House of Austria, although both powers were in alliance with them? How often have they granted such levies to one prince and refused them to his enemy, although they were not in alliance with either? They granted or refused the levies according as they thought it to their own interest to do so. Yet no one has ever dared attack them on that ground. But while prudence may make a Nation refrain from exerting its full right, the right is not thereby lost. It is merely a case of preferring to overlook a grievance rather than increase unnecessarily the number of one's enemies.

§ 98. Or who are in offensive alliance with him.

In the third place, those who, being bound to my enemy by an offensive alliance, actually assist him in the war which he is carrying on against me—they, I say, concur in the injury which he seeks to do me, and thereby show themselves to be my enemies, so that I am justified in treating them as such. Accordingly the Swiss, whose case we have just referred to, ordinarily grant troops only for a defensive war. Those in the service of France have always been forbidden by their sovereigns to bear arms against the Empire or against the German States of the House of Austria. In 1644 the captains of the Neufchatel regiment of Guy, on learning that they had been appointed to serve under Marshal Turenne in Germany, declared that they would rather die than disobey their sovereign and violate the alliances of the Swiss Confederation. Since France has been in possession of Alsace, the Swiss who have fought in its armies never cross the Rhine to attack the Empire. The brave Daxelhoffer, a captain from Berne, who commanded in the French service at the head of two hundred men, of whom his four sons formed the first rank, seeing that the general wished to force him to cross the Rhine, broke his spontoon and marched his company back to Berne.

§ 99. How a defensive alliance joins one with the enemy.

Even a defensive alliance, when concluded specifically against me, or, what amounts to the same thing, when concluded with the enemy during the war or when it is seen that war is about to be declared, constitutes a league with the enemy against me; and if anything results from it, I am justified in regarding the sovereign concluding it as my enemy. It is the case of one who assists my enemy without being under any obligation to do so, and who thus chooses to become himself my enemy (see § 97).

§ 100. Another case.

A defensive alliance, although general in character and made before there was any thought of the present war, produces the same effect as the alliance mentioned above if it stipulates that the allies are to assist each other with their full strength; for in this case it is a real league of war. And besides, it would be absurd, when a Nation is opposing me with all its forces, to deny me the right to make war upon it, and thus cut off the source of the help which it is giving to my enemy. What role is an auxiliary playing who makes war upon me at the head of all his forces?

It would be mockery on his part to assert that he is not my enemy. What more could he do if he boldly declared himself such? He is not sparing me, but he would like to see that he himself is spared. Shall I allow him to enjoy peace in his territories and to be protected from all danger while he is doing me all the harm in his power? No; the Law of Nature, the Law of Nations, obliges us to be just, but does not call upon us to be dupes.

§ 101. In what case it does not produce that effect.

But if a defensive alliance has not been formed expressly against me, nor concluded at a time when I was openly preparing for war, or had already begun it, and if the allies have merely stipulated that each of them is to furnish a definite amount of help to the one that is attacked, I can not require that they should set aside a solemn treaty, which they could certainly conclude without doing me an injury. The assistance which they give to my enemy is a debt which they are paying; and in discharging it they do me no wrong, and consequently give me no just ground for making war upon them (§ 26). Nor can I say that motives of self-protection oblige me to attack them; for in doing so I should only be increasing the number of my enemies, and drawing upon myself the whole strength of those Nations in place of the little help they were giving against me. Consequently it is only the troops that they send against me who are my enemies. These are actually fighting with the enemy against me.

The contrary principle would tend to multiply wars and spread them beyond all bounds, to the common destruction of all Nations. It is fortunate for Europe that in this matter practice is in accord with right principle. Seldom do princes presume to complain of assistance furnished to an ally for purposes of defense when it is stipulated for in treaties of long standing which were not directed against them in particular. In the late war the United Provinces for a long time furnished subsidies, and even troops, to the Queen of Hungary; and France made no complaint except when those troops marched into Alsace to attack the French frontier. The Swiss, in virtue of their alliance with France, furnish the King with numerous bodies of troops; yet they live in peace with all Europe.

To this rule may be found one exception, namely, when the defensive war is manifestly unjust. For in such case the obligation to assist an ally ceases (§§ 86, 87, 89). If a sovereign undertakes to do so, without necessity and in violation of his duty, he does a wrong to the enemy and wantonly sides against him. But the case rarely happens among Nations. There are few defensive wars in which no apparent reason can be found to defend their justice or necessity. Now, whenever a doubt exists, it is for each State to judge of the justice of its war, and the presumption is in favor of the ally (§ 86). Add to this that it is for you to determine what conduct your duties and your promises require of you, and that, in consequence, only the clearest evidence can warrant the enemy of your ally in accusing you of supporting an unjust cause, contrary to what you know to be right. In fine, the voluntary Law of Nations prescribes that, in every case susceptible of doubt, the war carried on by each party be regarded, as to its external effects, as lawful (§ 40).

§ 102. Whether war must be declared against the allies of the enemy.

Since the real allies of my enemy are themselves my enemies, I have the same rights against them that I have against my chief enemy (§ 95). And since they take up arms against me first of all, and thereby proclaim themselves my enemies, I may make war upon them without declaring it, for it is sufficiently declared by their own conduct. The rule holds especially with those who in any way unite to wage offensive war against me, and it also holds with all those of whom we have just spoken in sections 96, 97, 98, 99, and 100.

But the case is not the same with Nations which assist my enemy in a defensive war under such circumstances that I can not regard them as his allies (§ 101). If I have any ground of complaint because of the assistance they give him, that constitutes an original quarrel between me and them. I may call them to account, and if they do not give me satisfaction, I may prosecute my right and make war upon them. But, in that case, I must make a declaration of war (§ 51). The example of Manlius, who made war upon the Galatians for having supplied Antiochus with troops, is not in point. Grotius(*a*) censures the Roman general for having begun the war without a declaration. The Galatians, by furnishing troops for an offensive war against the Romans, had declared themselves enemies of Rome. It is true that, when peace had been made with Antiochus, it would seem that Manlius should have awaited orders from Rome before attacking the Galatians; and then, if that expedition was regarded as a new war, not only should war have been declared, but redress should have been demanded before coming to arms (§ 51). But the treaty with the King of Syria had not yet been ratified, and it referred only to him and made no mention of his allies. Manlius, therefore, undertook the expedition against the Galatians as a continuation or unfinished part of the war against Antiochus. That is the explanation which he himself very clearly gave, in his speech before the Senate;(*b*) and he even added that his first step was to try to persuade the Galatians to come to reasonable terms. Grotius cites, more to the point, the case of Ulysses and his companions, and blames them for having, without a declaration of war, attacked the Ciconians, who, during the siege of Troy, had sent help to Priam.(*c*)

(*a*) *De Jure Belli et Pacis*, Lib. III, Cap. III, §10. (*b*) Livy, Book XXXVIII. (*c*) Grotius, *ubi supra*, not. 3.

CHAPTER VII.

Neutrality, and the Passage of Troops Through a Neutral Country.

§ 103. Neutral nations.

Neutral Nations are those which take no part in a war, and remain friends of both parties, without favoring either side to the prejudice of the other. We are now to consider the obligations and the rights which follow from the status of neutrality.

§ 104. Conduct to be observed by a neutral nation.

In order to have a clear understanding of this question, we must avoid confusing the policy a Nation may pursue when it is free from any obligation, with the conduct it must observe during a war if it desires to be treated as perfectly neutral. So long as a neutral Nation desires to be secure in the enjoyment of its neutrality, it must show itself in all respects strictly impartial towards the belligerents; for if it favors one to the prejudice of the other, it can not complain if the latter treats it as an adherent and ally of the enemy. Its neutrality would be a hypocritical neutrality, of which no State would consent to be the dupe. A sovereign sometimes submits to such conduct because he is not in a position to resent it; he connives at it in order not to increase the forces against him. But we are here seeking to determine what may be done of right, not what prudence may suggest under the circumstances. Let us consider, then, what are the elements of this impartiality which a neutral Nation must observe.

It relates solely to what may be done in time of war, and includes two things: (1) To give no help, when we are not under obligation to do so, nor voluntarily to furnish either troops, arms, or munitions, or anything that can be directly made use of in the war. I say "to give no help," and not "to give equal help"; for it would be absurd for a State to assist at the same time both enemies, and besides it would be impossible to assist them both equally, since the same number of troops, the same quantity of arms, munitions, etc., when furnished under different circumstances, would not constitute equal help. (2) In all that does not bear upon the war a neutral and impartial Nation must not refuse to one of the parties, because of his present quarrel, what it grants to the other. This does not deprive it of the right to keep in view the best interests of the State when establishing relations of friendship or of commerce. When this policy leads it to give preferences in things of which every Nation may dispose freely, it is doing no more than it has a right to do, and it is not to be accused of being partial. But if it should refuse any of those things to one of the parties merely because he was at war with the other, and because it desired to favor his opponent, it would be departing from the line of strict neutrality.

§ 105. An ally may furnish the assistance which he owes, and still remain neutral.

I have said that a neutral State should give no help to either of the parties when it is not under obligation to do so. This qualification is necessary. We have already seen that when a sovereign furnishes the moderate help which he owes in virtue of an earlier defensive alliance he does not thereby become a party to the war (§ 101). Hence he may fulfill his obligation, and at the same time maintain a strict neutrality. Instances of this are frequent in Europe.

§ 106. The right to remain neutral.

When a war breaks out between two Nations, all the others who are not bound by treaties are free to remain neutral; and if either of the belligerent sovereigns should seek to force them to join in with him he would do them an injury, since he would be encroaching upon their independence in a very essential point. It is for them alone to determine whether they have any reason for taking sides; and there are two things for them to consider: (1) The justice of the cause. If that is clear, they can not aid the unjust party; on the contrary, it is honorable to give their aid to oppressed innocence when they can do so. If the cause be of doubtful justice, the other Nations may suspend their judgment, and not enter into a quarrel which does not concern them. (2) When they are convinced which party is in the right, it still remains for them to determine whether it be for the good of the State to intervene in the affair and take up the war.

§ 107. Treaties of neutrality.

A Nation which is carrying on war, or is about to carry on war, frequently takes the step of proposing a treaty of neutrality to a sovereign of whom it is suspicious. It is prudent for it to know in advance how matters stand, and not to expose itself to the risk of seeing a neighbor suddenly join with the enemy, when the war is at its height. On every occasion when a State is at liberty to remain neutral it is also at liberty to bind itself by treaty to do so.

Such treaties are sometimes justified by necessity. Thus, although it is the duty of all Nations to assist a just Nation that is being oppressed (Book II, § 4), yet if an unjust conqueror who is about to invade another's territory makes me an offer of neutrality, when he is in a position to overwhelm me, what better can I do than accept the offer? I yield to necessity, and the obligation imposed upon me by nature ceases to be binding because of my inability to perform it. That same inability would release me even from a perfect obligation, contracted by an alliance. The enemy of my ally threatens me with his greatly superior forces; my fate is in his hands, and he requires that I give up the liberty of furnishing any help against him. Necessity, and the care of my own safety, dispense me from keeping my promises. Thus it was that Louis XIV forced Victor Amadeus, Duke of Savoy, to break off from the allies. But the necessity must be a very urgent one. It is only the cowardly and the faithless who allow the smallest fear to warrant them in failing to fulfill their promises or in deserting their duty. In the late war the King of Poland, Elector of Saxony, and the King of Sardinia held out resolutely against the misfortune attending their arms, and, to their great honor, could not be forced to treat except in conjunction with their allies.

§ 108. Further reason for making these treaties.

Treaties of neutrality are useful, and even necessary, for another reason. The Nation which wishes to secure its own peace when the flames of war are burning in its neighbors' territories can not do better than conclude with the two belligerents treaties in which it is expressly agreed what each party may do, or require, in virtue of the neutrality. In this way peace is maintained, and all difficulty and duplicity prevented.

§ 109. Foundation of the rules of neutrality.

Without such treaties it is to be feared that disputes will often arise as to what a neutral Nation may do, and what it may not do. The subject presents many questions which writers have discussed with much heat, and which have given rise to serious quarrels among Nations. Still, the Law of Nature and of Nations has its fixed principles, and can give us rules on this subject as on others. There are, moreover, certain practices which have become customary among civilized Nations, and which must be conformed to, if a State does not wish to draw upon itself the blame of unjustly breaking the peace. As to the rules of the natural Law of Nations they result from an equitable adjustment of the laws of war to the liberty, the safety, the welfare, the commerce, and the other rights of neutral Nations. It is upon that principle that we shall lay down the following rules:

§ 110. How levies of troops may be permitted, money lent, or articles of every kind sold, without a violation of neutrality.

In the first place, no acts of a Nation which are in keeping with its rights, and are done solely with its own welfare in view, without partiality, without intent to favor one power to the prejudice of the other—no such acts, I say, can, in general, be regarded as contrary to neutrality, and they only become so on those special occasions when they can not be done without injuring one of the belligerents, who has then the right to oppose them in that particular case. Thus, one who is besieging a town has the right to forbid entry into it (see below, § 117). Apart from cases of this nature, why should the quarrels of others deprive me of the free exercise of my rights, in the pursuit of the policy which I deem to be useful to my Nation? When, therefore, it is the custom of a Nation, in order to employ and to train its subjects, to permit levies of troops in favor of a sovereign to whom it is willing to intrust them, the enemy of that sovereign can not regard the permission as an act of hostility, unless the levies be intended for the invasion of his States, or for the defense of an improper and manifestly unjust cause. He can not even claim as a right that the same permission be granted to him, because that Nation may have reasons for refusing it to him which do not hold in the case of his opponent. The Swiss, as we have already stated, grant levies of troops to whomsoever they please; and thus far no one has been minded to make war upon them for doing so. It must be confessed, however, that if these levies were considerable, if they constituted the chief forces of my enemy, while, without any good reason being given, they were refused absolutely to me, I would have just grounds for regarding that Nation as in league with my enemy, and, in that case, the care of my own safety would warrant me in treating it as such.

The same rule holds with respect to money which a Nation might be in the habit of lending out at interest. That the sovereign, or his subjects, should thus lend their money to my enemy, and yet refuse it to me because they have not the same confidence in me, does not constitute a violation of neutrality. They lend their money where they think it safe. If their preference is not based on good grounds, I may very properly attribute it to ill-will towards me, or to a partiality for my enemy. But if I were to take occasion therefrom to declare war I should be condemned no less by the true principles of the Law of Nations than by the general custom now happily established in Europe. So long as it appears that this Nation lends its money solely in order to obtain interest, it may freely dispose of it as it thinks best, without my having any right to complain. But if the loan is evidently made in order to enable my enemy to attack me, that would amount to uniting with him in making war upon me.

Further, if these troops were furnished to my enemy by the State itself, and at its own expense, or if the money were lent in like manner by the State without interest, it would be no longer a question to determine whether such help were inconsistent with neutrality.

Let us add that, following the same principles, if a Nation carries on a trade in arms, building-timber, vessels, or ammunition, I can not complain that it sells those articles to my enemy, provided it does not refuse to sell them to me also at a reasonable price. It carries on its trade without intent to injure me; and in continuing to do so as if I were not at war it gives me no just ground of complaint.

§ 111. Trade of neutrals with belligerents.

In what has just been said it is supposed that my enemy goes himself to the neutral country to make his purchases. Let us now speak of another case, that of the trade which neutral Nations may carry on with the enemy by shipping their goods to him. It is certain that, as they are taking no part in my quarrel, they are not bound to give up their trade in order to avoid furnishing my enemy with the means of carrying on war against me. If they should assume the position of refusing to sell any of those articles to me, while taking steps to ship them in abundance to my enemy, with the evident purpose of favoring him, such partiality would make them cease to be neutral. But if they do no more than attend to their commerce, they do not thereby declare themselves against me; they merely exercise a right which they are under no obligation to sacrifice to me.

On the other hand, when I am at war with a Nation my safety and my welfare require that I deprive it, as far as is in my power, of everything that will enable it to resist me and do me harm. Here the law of necessity comes into force. If this law properly allows me, on occasion, to seize the property of another, will it not allow me to seize all the articles of use in war which neutral Nations are carrying to my enemy? Although I should thereby make for myself enemies of these neutral Nations, it is better for me to risk doing so than to allow one who is actually carrying on war against me to be freely assisted and strengthened. It is therefore very proper, and entirely in accord with the Law of Nations, which is against multiplying the causes of war, not to class as acts of hostility seizures of this kind made of the property of neutral Nations. When I have notified them of my declaration of war upon such or such a Nation, if they choose to expose themselves to the risk of carrying to it articles useful in war, they have no cause for complaint in case their goods fall into my hands, just as I do not declare war upon them for having attempted to carry them. They suffer, it is true, from a war in which they have no part; but that is an accident. I am not opposing their right; I am merely exercising mine; and if our rights conflict and mutually injure each other, it is the result of unavoidable necessity. Such conflicts of rights happen every day in war. When, in pursuance of my rights, I lay waste to a country from which you are drawing your support, when I besiege a town with which you carry on a profitable commerce, I undoubtedly harm you and cause you losses and inconveniences; but it is done without any intention of hurting you, and as I am only using my rights, I am not doing you an injustice.

But in order to set bounds to these inconveniences and to allow as much freedom to the commerce of neutral Nations as is consistent with the rights of the belligerents, there are certain rules to be observed, on which there seems to be a fairly general agreement among European Nations.

§ 112. Contraband goods.

The first is that a careful distinction is to be made between ordinary goods which bear no relation to war and those which are particularly useful in it. Trade in the former should be left entirely free to neutral Nations; the belligerents can not with reason forbid or prevent the carrying of such goods to the enemy; the care of their safety, the necessity of self-defense, do not warrant such a step, since the possession of those goods will not strengthen the enemy. To attempt to interrupt or prohibit such trade would be to violate the rights of neutral Nations and to do them an injury, since necessity, as we have just said, is the sole reason which warrants a restriction upon their commerce and their right of entry into the ports of the enemy. When England and the United Provinces agreed by the Treaty of Whitehall, signed on August 22, 1689, to notify all the States which were not at war with France that they would attack every vessel bound for or leaving any of the ports of that Kingdom, and that they would declare in advance such vessel to be good prize, Sweden and Denmark, from whom some ships had been taken, entered into an alliance on March 17, 1693, for the purpose of maintaining their rights and procuring just redress. The two maritime powers recognized that the complaints of the two Nations were well-founded and made satisfaction to them.(*a*)

Things which are of special use in war, and of which the transportation to the enemy is forbidden, are called contraband goods. Such are arms, ammunition, timber and materials used in constructing and arming war vessels, horses, and even provisions on certain occasions when it is hoped to starve the enemy into submission.

§113. Whether such goods may be confiscated.

But in order to prevent the carrying of contraband goods to the enemy, is it enough to stop and seize them, on paying the value to the owner; or are we justified in confiscating them? To limit ourselves to intercepting contraband goods would in general prove ineffectual, especially at sea, where it is not possible to cut off all access to the ports of the enemy. Hence the plan is followed of confiscating all contraband goods which can be seized, in order that the fear of loss may act as a check upon the desire of gain and thus induce the merchants of neutral countries to abstain from such trade with the enemy. And, indeed, it is so important for a Nation which is carrying on war to prevent, as far as it can, the transportation to the enemy of things which will strengthen him and render him more formidable, that necessity and the care of its own safety and welfare warrant it in taking effective measures, in declaring that it will consider as good prize all things of this kind that are being shipped to the enemy. It is for this reason that it notifies neutral Nations of its declaration of war (§ 63); whereupon the latter ordinarily warn their subjects to abstain from all contraband trade with the belligerents, declaring that if subjects are captured when engaged in it, the sovereign will not protect them. This rule seems to be the generally established practice of Europe at the present time, but it has become so after many variations, as can be seen from the note just cited from Grotius, and especially from the decrees of the Kings of France in the years 1543 and 1584, which allow the French to seize and retain contraband goods only upon payment of their value. The modern practice is certainly more in accord with the mutual duties of Nations, and is a better adjustment of their respective rights. A Nation which is carrying on war has an important interest in depriving its enemy of all help from without, and in consequence it is justified in regarding those who carry to the enemy things of which he has need for the war, if not as downright enemies, at least as persons who are very little concerned about injuring it; and, accordingly, it punishes them by confiscating their goods. If their sovereign should undertake to protect them, the act would be equivalent to a desire on his part to furnish such help—an attitude certainly inconsistent with neutrality. A Nation which, without other motive than the desire of gain, is employed in strengthening my enemy, and does not fear causing me irreparable harm, that Nation is certainly not my friend,(*b*) and its conduct justifies me in considering it and in treating it as in league with my enemy. Hence, in order to avoid constant subjects of complaint and of quarrel, it has been agreed, and the rule is in perfect accord with right principle, that the belligerents may seize and confiscate all contraband goods which neutral merchants carry to the enemy, without any complaint from the sovereign of those merchants; just as, on the other hand, the belligerents do not impute to neutral sovereigns these acts on the part of their subjects. Care is even taken to regulate in detail all these matters in treaties of commerce and navigation.

§ 114. Search of neutral vessels.

The carriage of contraband can not be prevented unless the belligerent searches the neutral ships which he meets at sea. Hence follows the right to search them. Certain powerful Nations have at times refused to submit to this search. "After

---

(*a*) See other examples cited by Grotius, Lib. III, Cap. I, § 5, not. 6.

(*b*) Recently the King of Spain forbade Hamburg vessels to enter his ports, because that city had engaged to furnish ammunition to the Algerians, and he thus forced it to break its treaty with the Barbary States.

the peace of Vervins, Queen Elizabeth, continuing the war with Spain, asked the King of France to allow her to search the French vessels bound for Spain, in order to find out whether they were secretly carrying ammunition. But the permission was refused, on the ground that the search would be a favorable opportunity for plunder and an interference with commerce."(*a*) At the present day a neutral vessel which should refuse to allow itself to be searched would for that reason alone be condemned as lawful prize. But in order to avoid inconveniences, oppression, and abuses of any kind, it is provided in treaties of commerce and navigation how the search is to be made. It is the established custom to-day that full credit is to be given to certificates, clearances, etc., produced by the master of the ship, unless there is evidence of fraud in them or there are good reasons for suspecting them.

§ 115. Enemy goods upon a neutral vessel.

If property belonging to the enemy is found upon a neutral vessel, the law of war allows its seizure; but the freight should properly be paid to the master of the ship, who is not to suffer by the seizure.

§ 116. Neutral goods upon an enemy vessel.

The property of neutrals, found upon an enemy vessel, should be restored to the owners, against whom the belligerent has no right of confiscation; but no indemnity is due for delay, decay, etc. The loss which neutral owners suffer on such occasions is a casualty to which they expose themselves in shipping their goods upon an enemy vessel, and the belligerent who, in exercising the rights of war, captures this vessel, is not responsible for the casualties which may result therefrom, any more than if his cannon should kill a neutral passenger who unfortunately happened to be on board an enemy ship.

§ 117. Trade with a besieged town.

Thus far we have spoken of the trade of neutral Nations with the territories of the enemy in general. There is a special case in which the rights of war extend still further. All trade with a besieged town is absolutely forbidden. When I am besieging a town, or merely blockading it, I have the right to prevent any one from entering it, and to treat as an enemy whoever attempts to enter it, or to carry anything into it, without my permission; for such a person would be opposing my undertaking, and might contribute thereby to its defeat and thus bring upon me all the evils of an unsuccessful war. King Demetrius hanged the master and the pilot of a vessel which was carrying provisions to Athens at a time when he was on the point of reducing the city by famine.(*b*) In the long and bloody war which the United Provinces carried on against Spain for the recovery of their freedom, they were unwilling to permit the English to carry goods to Dunkirk, which was blockaded by their fleet.(*c*)

§ 118. Impartial offices of neutral nations.

A neutral Nation maintains with both of the belligerents the relations which are part of the natural intercourse of Nations; it should be ready to render them all the offices of humanity which are due from one Nation to another; it should give them, in all that does not directly concern the war, all the assistance in its power, as far as they have need of it. But it must give it impartially; that is to say, it must refuse nothing to either of the belligerent States because it is at war with the other (§ 104). But this does not prevent a neutral State, which is bound by special ties of friendship and intimacy with one of the belligerents, from granting to it, in all that does not concern the war, those preferences which are due to friends. With even greater reason may it without objection continue, with respect to commerce, for example, to grant to that belligerent certain favors stipulated for in treaties between them. Hence it may allow, as far as the public welfare will permit, the subjects of both belligerents alike, to come into its territories on business

---

(*a*) Grotius, *ubi supra.*

(*b*) Plutarch, Life of Demetrius.

(*c*) Grotius, *loc. cit.*

and to buy provisions, horses, and in general all the things of which they have need; unless by a treaty of neutrality it has promised to refuse to both parties things useful for war. Throughout all the wars which disturb Europe the Swiss keep their territories in a state of neutrality; they allow the subjects of every Nation without distinction to come and purchase provisions, if the country has an overstock of them, as well as horses, ammunition, and arms.

§ 119. Passage of troops through a neutral country.

A sovereign must grant an innocent passage through his territories to all Nations with which he lives at peace (Book II, § 123), and the permission must be extended to bodies of troops as well as to individuals. But it is for him to determine whether the passage be innocent (*ibid.*, § 128), and that of an army can scarcely ever be entirely so. During the late wars in Italy the territories of the Republic of Venice and those of the Pope suffered very great damage from the passage of armies, and frequently became the theater of the war.

§ 120. Right of passage should be asked for.

Since the passage of troops, and especially of an entire army, is not matter of no consequence to the sovereign of the territory, his permission should be asked if the belligerent wishes to march through the neutral country. To enter his territory without his consent would be a violation of his rights of sovereignty and supreme dominion, in virtue of which no one may make use of that territory in any way whatsoever without his express or implied permission. Now, owing to the serious consequences which may follow from marching a body of troops through a country, the permission to do so can never be implied.

§ 121. It may be refused for good reasons.

If the neutral sovereign has good reasons for refusing to grant a right of passage he is not obliged to grant it; for in that case the passage would not be innocent (Book II, § 127).

§ 122. In what cases a passage may be forced.

In all doubtful cases we must defer to the judgment of the owner as to the innocence of the use which we desire to make of his property (Book II, §§ 128, 130), and must submit to his refusal, although we believe it to be unjust. If the injustice of the refusal were manifest, if the use of the property—in this case the passage through the territory—were unquestionably innocent, a Nation might obtain justice for itself and take by force the right which was unjustly refused it. But we have already said that the passage of an army through a territory can scarcely be entirely innocent, much less manifestly so; the evils which it may give rise to, the dangers which may attend it, are so varied, far-reaching and complicated, that it is almost always impossible to foresee and prevent them all. Besides, men's judgments are greatly influenced by self-interest. If he who asks for the permission is to be judge of the innocence of his passage, he will admit none of the reasons alleged against it, and the door will be opened to continual quarrels and conflicts. Hence the common peace and safety of all Nations requires that each sovereign be master in his own territory, and free to refuse admittance to any foreign army, when he has not parted with his natural rights in that respect by treaties. The sole exception is of those very rare cases when the evidence is perfectly clear that the passage asked for is absolutely without inconvenience or danger. If on such an occasion a passage be forced, the blame would fall less upon the sovereign forcing it than upon the Nation which has thus indiscreetly exposed itself to be so treated. One other case from its very nature forms a proper exception, namely, that of urgent necessity. Imperative and absolute necessity suspends all the rights of ownership (Book II, §§ 119, 123), and if the owner is not under the same pressure of necessity that you are under, you may make use of his property even against his will. When, therefore, an army sees itself exposed to destruction, or when it can not return to its own country without passing through neutral territory, it has the right to pass through in spite of the sovereign, and it may force a passage sword in hand. But it should first ask for permission to pass through, and should offer securities, and promise to pay for whatever damage it may cause. Such was the conduct of the Greeks when returning from Asia under the leadership of Agesilaus.(*a*)

Imperative necessity may also warrant a belligerent in seizing temporarily a neutral town and placing a garrison there, for the purpose either of protecting himself against the enemy or of anticipating the designs of the enemy upon the same town, when the sovereign is unable to defend it. But as soon as the danger is past the town must be restored and indemnity paid for whatever inconvenience or damage may have been caused.

§ 123. The fear of danger may justify a sovereign in refusing passage.

When the passage is not of absolute necessity the mere danger of receiving into his territories a powerful army can warrant a sovereign in refusing admittance to it. He may fear that it will be tempted to take possession of the country or at least to act as owner of it and take up free quarters in it. Let it not be said with Grotius(*b*) that our unreasonable fear should not deprive of his right the belligerent who asks passage. A probable fear, based upon good grounds, gives us the right to avoid whatever may bring about its realization; and the fear we refer to is only too well justified by the conduct of Nations. Besides, the right of passage is not a perfect right, except in cases of urgent necessity or when there is the clearest evidence that the passage will be harmless.

§ 124. Or in exacting every reasonable security.

In the preceding paragraph I suppose it impracticable to obtain such securities as will take away all grounds for fearing any improper or violent conduct on the part of the belligerent who requests a right of passage. If such securities can be obtained, and the best security is to allow the army to march through in small companies only, and to require them to hand over their arms, as has been done,(*c*) then the refusal based on fear is no longer justified. But he who wishes to march through should give all the reasonable securities required of him, and consequently should march his army by divisions and hand over the soldiers' arms if the sovereign is unwilling to allow him to march through except on those conditions. It is not for him to determine what securities he should give. Hostages, or a bond, would often furnish but small assurance of good conduct. Of what advantage will it be to me to hold hostages from one who will make himself master over me? And a bond is very little security against a sovereign of greatly superior power.

§ 125. Whether the belligerent must always give the security required.

But is the belligerent always obliged to give whatever security a Nation exacts as the condition of passing through its territory? In the first place, we must distinguish between the purposes for which the passage may be desired, and then we must consider the civilization of the Nation of which the request is made. If the belligerent has no vital need of passing through the territory, and if he can not obtain the permission to do so except upon suspicious or unsatisfactory conditions, he must give up the attempt, as he would in the case of a refusal (§ 122). But if necessity warrants him in passing through, the conditions on which the permission will be given may prove acceptable, or suspicious, or deserving of rejection, according to the manners and customs of the Nation with which he is dealing. Suppose that he must cross the lands of a barbarous, savage, and faithless Nation; must he put himself at its mercy by handing over the soldiers' arms and making his army pass through by divisions? I do not think anyone would condemn him to take such a risk. As necessity warrants him in passing through, a sort of further necessity warrants him in protecting his march from sudden attacks or violence of any kind.

(*a*) Plutarch, Life of Agesilaus.

(*b*) Lib. II, Cap. II, § 13, n. 5.

(*c*) By the Eleans, and by the ancient inhabitants of Cologne. See Grotius, *loc. cit.*

He will offer every security which he can give without unwisely exposing himself; and if the Nation is not satisfied, he can do no more than be guided by necessity and by prudence, and, I may add, by the most conscientious moderation, in order not to go beyond the right which necessity gives him.

§ 126. Impartiality which the neutral must observe in granting or refusing passage to the two belligerents.

If the neutral State grants or refuses passage to one of the belligerents, it should grant or refuse it in like manner to the other, unless the difference of circumstances give it good grounds for discriminating. Without such grounds, to grant to one belligerent what it refuses to the other would be to show partiality and to violate strict neutrality.

§ 127. No complaint can be made of a neutral state which grants passage.

When I have no reason for refusing passage, the belligerent against whose interest it is granted has no right to complain of it, much less to draw from it a reason for declaring war against me, since I am doing no more than what the Law of Nations prescribes (§ 119). Neither has he any right to require that I refuse to grant the passage, since he can not prevent me from doing what I believe to be my duty. And even on the occasions when I might with justice refuse the passage, I am at liberty to waive the exercise of my right. But especially when I should be obliged to back up my refusal with the sword, who will presume to complain that I have preferred to let war be carried into his country rather than draw it down upon myself? No one may require that I take up arms in his favor when I am not under obligation by treaty to do so. But Nations, looking rather to their interests than to the observance of strict justice, are continually making much of this pretended ground of complaint. In war especially they avail themselves of any means, and if by their threats they can induce a neighbor to refuse passage to their enemies, the majority of rulers look upon such conduct as nothing more than good statesmanship.

§ 128. The neutral state may refuse passage from fear of the resentment of the other belligerent.

A powerful State will scorn these unjust threats, and, following resolutely what it believes to be the path of justice and honor, it will not let itself be turned aside by the fear of an ill-founded resentment; it will not even allow itself to be threatened. But a weak State, being in a poor position to maintain its rights with advantage, will be forced to look to its own safety, and that grave duty will warrant it in refusing a passage which would expose it to too great danger.

§ 129. And in order to prevent its country from becoming the theater of war.

The further fear of drawing down upon its country the evils and tumult of war may warrant a neutral State in refusing passage to a belligerent. For even if the other belligerent is sufficiently reasonable not to use threats to make the neutral refuse passage to his enemy, he will in turn ask passage for himself, and the neutral country will thus become the seat of war. The countless evils which would result therefrom are a very good reason for refusing the passage. In all these cases the belligerent who undertakes to force a passage does an injury to the neutral State and gives it full justification for joining in with the other belligerent. The Swiss, in their alliances with France, have agreed not to grant passage to her enemies. They regularly refuse it to all sovereigns who are at war, so as to keep off that scourge from their borders; and they see that their territory is respected. But they grant passage to recruits, when marching through in small companies and unarmed.

§ 130. What is included in the grant of a right of passage.

The grant of a right of passage includes the grant of whatever is naturally connected with the passage of troops, and of those things without which it could not take place; this includes the right of the belligerent to take with him whatever is needed by an army, the right to exercise military discipline over the soldiers and officers, the permission to buy at a fair price such things as the army may require, unless, through fear of scarcity, the neutral has stipulated that the belligerent is to carry his provisions with him.

§ 131. Safety of the passage.

The neutral State which grants passage to a belligerent must render it safe, as far as lies in its power. Good faith requires this; and any other conduct would be equivalent to ensnaring the belligerent.

§ 132. No acts of hostility may be committed by the belligerents in a neutral country.

For this reason, and because foreigners can do nothing in a territory contrary to the will of the sovereign, the belligerent is not permitted to attack his enemy in a neutral country, nor to commit any other act of hostility there. When, in the year 1666, the Dutch East-India fleet took refuge in the port of Bergen in Norway in order to escape the enemy, the English admiral presumed to attack them there. But the governor of Bergen fired upon the assailants, and the Danish court complained, though perhaps too timidly, of a proceeding so injurious to its dignity and to its rights.(*a*) To conduct prisoners and carry booty into a place of safety are acts of war; they can not, therefore, be done in a neutral country, and the neutral permitting them would be violating its neutrality by favoring one of the parties. I am speaking here of prisoners and booty not yet completely in the power of the enemy, and whose capture is, so to say, not fully completed. For example, a company detached from the main army can not make use of a neighboring neutral country as a depot where prisoners and booty may be left in security. If the neutral State were to allow this, it would be giving assistance and support to that belligerent. When the capture is completed and the booty completely in the power of the belligerent, the neutral does not inquire how he came by the property; it belongs to him, and he may sell it in a neutral country. The captain of a privateer brings his prize into the nearest neutral port and there sells it freely. But he may not land his prisoners and still hold them captive, because the act of holding prisoners of war in captivity is a continuation of hostilities.

§ 133. A neutral must not offer a retreat to troops, so as to enable them to attack their enemy anew.

On the other hand, it is certain that if my neighbor offers a retreat to my enemies, when they have been defeated and are too weak to escape me, and allows them time to recover and to watch for an opportunity of making a fresh attack upon my territory, such conduct, so injurious to my safety and to my welfare, would be inconsistent with neutrality. When, therefore, my enemies, after suffering defeat, retreat into his territory, if charity will not allow him to refuse them a safe passage, he should make them march on through as soon as possible, and not allow them to lie in wait to make a fresh attack upon me; otherwise he warrants me in pursuing them into his territory. This is what happens when Nations are not in a position to make their territory respected. It soon becomes the seat of the war; armies march, camp, and fight in it, as in a country open to all comers.

§ 134. Proper conduct of troops passing through a neutral country.

The troops to whom passage is granted should avoid causing the least damage to the country; they should keep to the high-roads, and not enter the possessions of private persons; they should observe the strictest discipline, and pay without fail for whatever is furnished them. And if the disorderly conduct of the soldiers, or certain necessary operations, such as camping or intrenching, have caused damage, the general commanding them, or their sovereign, must make reparation. All this needs no proof. How can a belligerent be justified in inflicting damage upon a country when he has only the right to ask for an innocent passage?

There is no reason why the neutral sovereign should not stipulate for a sum of money as indemnity for certain damages, which it is difficult to estimate, and for the inconveniences caused by the passage of an army. But it would be disgraceful for him to sell the actual permission to pass through; moreover, it would be unjust when the passage is attended with no damage, since in such case it is his duty to

---

(*a*) The English author of "The Present State of Denmark" claims that the Danes had promised to deliver up the Dutch fleet, but that it was saved by some timely presents to the court of Copenhagen. (Chap. x.)

grant it. Further, he should see to it that the indemnity be paid to the subjects who have suffered, and he is in no way justified in taking to himself what has been given for their indemnification. It happens but too often that the weak suffer the loss and the powerful receive the indemnity.

§ 135. Passage may be refused when the war is evidently unjust.

Finally, since even an *innocent* passage is only due where the object for which it is sought is a just one, the neutral State may refuse it to one who asks it in order to carry on a manifestly unjust war, as, for example, in order to invade a country without real or pretended grounds. Thus Julius Cæsar refused passage to the Helvetii, who left their country in order to conquer a better one. I suspect that his refusal was due rather to political design than to love of justice; but, after all, he was justified on that occasion in being guided by a prudent policy. A sovereign who is in a position to refuse without fear should certainly do so in such a case. But if his refusal would be dangerous for him, he is not called upon to draw down evil upon his own head in order to protect that of another; indeed, it is his duty not to expose his people rashly.

CHAPTER VIII.

The Law of Nations in Time of War; First, What It Is Justifiable and What It Is Permissible to Do to the Person of the Enemy in a Just War.

§ 136. General principle of the rights of a sovereign against his enemy in a just war.

What we have said thus far relates to the right to make war. Let us now proceed to the law which should govern the war itself, to the rules which Nations should mutually observe, even when they have taken up arms for the settlement of their disputes. Let us begin by setting forth the rights of the sovereign who is waging a just war; let us see what it is lawful for him to do to his enemy. His whole conduct may be deduced from a single principle, from the object of a just war; for when the end is lawful he who has a right to pursue that end has, naturally, a right to make use of all the means necessary to attain it. The object of a just war is to avenge or to prevent an injury (§ 28); that is to say, to obtain justice by force when it can not otherwise be had, to compel the offender to repair the injury already done, or to give security that a threatened injury will not be inflicted. Hence, when war has been declared, the sovereign has the right to act towards his enemy in such a way as will bring him to reason and make him do justice and give security against misconduct.

§ 137. Difference between acts which are justifiable as between enemies, and acts which are merely permissible, or allowed to go unpunished.

A lawful end confers a right only to those means which are necessary to attain that end. Whatever is done in excess of such measures is contrary to the natural law, and must be condemned as evil before the tribunal of conscience. Hence it follows that certain acts of hostility may be justifiable or not, according to circumstances. What is perfectly innocent and just in one war, owing to peculiar conditions, is not always so on other occasions; right keeps pace with necessity, with the demands of the situation; it never goes beyond those limits.

But as it is very difficult always to form a just estimate of what the actual situation demands, and, moreover, as it is for each Nation to determine what its particular circumstances warrant it in doing (Introd., § 16), it becomes absolutely necessary that Nations should mutually conform to certain general rules on this subject. Thus, when it is clear and well recognized that such a measure, such an act of hostility, is, in general, necessary for overcoming the resistance of the enemy and attaining the object of lawful war, that measure, viewed thus in the abstract, is regarded by the Law of Nations as lawful and proper in war, although the belligerent who should make use of it without necessity, when less severe measures would have answered his purpose, would not be guiltless before God and in his own conscience. This is what constitutes the difference between what is just, proper, and irreprehensible in war, and what is merely permissible and may be done by Nations with impunity. The sovereign who desires to keep his conscience pure and to fulfill the duties of humanity with all strictness, should never lose sight of what we have already said more than once, that nature only grants him the right to make war upon his fellow-men as a matter of necessity, and as a remedy, always unfortunate, but often indispensable, against violence or stubborn injustice. If he is impressed with that great truth he will not push the remedy beyond its just limits, and he will be careful not to make it more severe or more disastrous to mankind than the care of his own safety and the defense of his rights require.

§ 138. The right to weaken the enemy by all means not essentially unlawful.

Since the object of a just war is to overcome injustice and violence, and to use force upon one who is deaf to the voice of justice, a sovereign has the right to do to his enemy whatever is necessary to weaken him and disable him from maintaining his unjust position; and the sovereign may choose the most efficacious and appropriate means to accomplish that object, provided those means be not essentially evil and unlawful, and consequently forbidden by the Law of Nature.

§ 139. Right over the person of the enemy.

The enemy who unjustly attacks me gives me an unquestionable right to resist his attack; and he who takes up arms against me, when I am demanding only what is my right, becomes himself the real aggressor by his unjust resistance; he is the original author of the war, since he obliges me to use force in order to protect myself from the wrong he wishes to do me either in my person or in my property. If the use of this force be carried so far as to take away his life, he alone is responsible for that unfortunate result; for if I were obliged to submit to the wrong rather than hurt him, the good would soon become the prey of the wicked. Such is the source of the right to kill our enemies in a just war. When we can not overcome their resistance and bring them to terms by less severe means, we are justified in taking away their lives. Under the word enemies must be included, as we have explained, not only the original author of the war, but all those who join in with him and fight for his cause.

§ 140. Limits of this right. An enemy who has ceased to resist may not be killed.

But the very argument for the right to kill our enemies points out the limits of that right. As soon as an enemy submits and hands over his arms we have no longer the right to take away his life. Hence we must give quarter to those who lay down their arms, and when besieging a town we must never refuse to spare the lives of a garrison which offers to surrender. The humane manner in which war is at present waged by the majority of European Nations can not be too highly commended. If sometimes, in the heat of battle, a soldier refuses quarter, it is always against the will of the officers, who are eager to save the lives of enemies who have laid down their arms.

§ 141. A particular case in which quarter may be refused.

There is one case, however, in which we may refuse to give quarter to enemies who surrender, or to accept any terms of capitulation from a town reduced to extremities. This is when the enemy have rendered themselves guilty of some grave violation of the Law of Nations, and especially when they have violated the laws of war. Such a refusal to spare their lives is not a natural consequence of the war, but a punishment of their crime, a punishment which the injured party has a right to inflict. But in order that the punishment may be just, it must fall upon those who are guilty. When a sovereign is at war with a savage nation which observes no rules and never thinks of giving quarter he may punish the Nation in the person of those whom he captures (for they are among the guilty), and by such severity endeavor to make them observe the laws of humanity; but in all cases where severity is not absolutely necessary mercy should be shown. Corinth was destroyed for having violated the Law of Nations by its treatment of the Roman ambassadors. Cicero and other great men have condemned the act as too severe. No matter how just the grounds a State may have for punishing a sovereign with whom it is at war, it will always be accused of cruelty if it inflicts the punishment upon his innocent subjects. There are other means of punishing the sovereign; the State may deprive him of some of his rights, or may take away certain towns and provinces. The evil which his whole Nation suffers in this last case is an unavoidable result of the common destiny shared by those who unite in civil society.

§ 142. Retaliation.

This leads us to speak of a kind of *retaliation* sometimes practised in war. When the general of the enemy has hanged without just cause certain prisoners taken from us, we hang an equal number of his men, choosing those of the same rank as ours, and notifying him that we will continue to return like for like, in order to compel him to observe the laws of war. It is a dreadful and extreme measure thus to inflict a miserable death upon a prisoner for the fault of his general, and if we have already promised to spare the life of that prisoner, we can not retaliate upon him without injustice. However, as a prince, or his general, is justified in sacrificing the lives of his enemies to his own safety and that of his people, it would seem that if he is dealing with an inhuman enemy who frequently commits atrocities such as that above mentioned, he may refuse to spare the lives of certain prisoners whom he captures, and may treat them as his own men have been treated. But the generosity of Scipio is more worthy of imitation. That great man, having reduced to subjection certain Spanish princes who had revolted against the Romans, told them that if they broke faith with him he would not hold innocent hostages accountable, but themselves; and that he would not avenge himself upon unarmed prisoners, but upon soldiers in open battle.(*a*) Alexander the Great, having cause of complaint against Darius for certain wrongful acts, sent word to him that if he carried on war in that manner he himself would push it to the extreme, and would give no quarter.(*b*) It is thus that an enemy who violates the laws of war is to be checked, and not by making the punishment of his crime fall upon innocent victims.

§ 143. Whether the governor of a town may be put to death because of an obstinate defense.

It is difficult to understand how, in an enlightened age, it could be thought lawful to put to death a governor who has defended his town to the last point, or who in a weak fortress has dared hold out against a royal army. This idea prevailed even in the last century, and was said to be a law of war; it has not been entirely rejected at the present day. A strange principle it is to punish a brave man for having done his duty! Alexander the Great thought very differently when he gave orders that certain Milesians were to be spared because of their courage and their loyalty.(*c*) "When Phyton was being led to execution by order of Dionysius the tyrant, because he had obstinately defended the town of Rhegium, of which he was governor, he cried out that it was unjust to put him to death for having refused to betray the town, and that Heaven would soon avenge his death. Diodorus Siculus considers his punishment to have been unjust."(*d*) It is idle to object that a stubborn defense against a large army, especially when the town is weak, only results in a needless shedding of blood. Such a defense, by delaying the enemy a few days longer, might be the means of saving the State; and moreover, bravery makes up for weaknesses in the fortifications. The Chevalier Bayard, having forced his way into the town of Mézières, defended it with his usual valor,(*e*) and showed clearly that a brave man is sometimes capable of saving a place which another would not think tenable. The history of the siege of Malta also proves how far courageous men may carry a defense when their determination is strong. How many towns have surrendered which might have held the enemy in check for a much longer time, thereby forcing them to waste their resources and abandon the rest of their campaign, and which might even have escaped altogether had their defense been more resolute and vigorous! In the late war, when the strongest fortresses in the Netherlands fell within a few days, the brave general de Leutrum was seen to defend Coni against the assault of two powerful armies, and to hold out, in so poorly fortified a position, forty days from the opening of the attack, thus saving his

---

(*a*) Neque se in obsides innoxios, sed in ipsos, si defecerint, sæviturum: nec ab inermi, sed ab armato hoste pœnas expetiturum. (Livy, Lib. XXVIII.)

(*b*) Quint. Curt., Lib. IV, Cap. I and Cap. XI.

(*c*) Arrian. De Exped. Alex., Lib. I, Cap. XX.

(*d*) Lib. XIV, Cap. CXIII, quoted by Grotius, Lib. III, Cap. XI, § 16, n. 5.

(*e*) See his biography.

town, and with it all Piedmont. If you insist on it that by threatening a commander with death you can shorten a bloody siege, spare your troops, and save precious time, I answer that a brave man will despise your threats, or else, spurred on by the thought of the shameful death awaiting him, he will bury himself under the ruins of his fortress, and, by thus selling his life dearly, will make you pay heavily for your injustice. But although you should gain greatly by unlawful conduct, you are not therefore justified in resorting to it. The threat of unjust punishment is itself unjust; it is both an insult and an injury. But to carry it into effect would be barbarously cruel; and if you agree that the threat can not be carried into effect, it becomes idle and absurd. Just and honorable means may be employed to persuade a governor not to hold out uselessly to the last extremity, and this is the present method made use of by wise and humane generals; when the proper time comes they summon the governor to surrender; they offer him honorable and advantageous terms, and threaten that if he delays too long he will be regarded when he surrenders as a mere prisoner of war, to be treated at discretion. If he is obstinate, and is at length forced to surrender unconditionally, they may treat him and his garrison as severely as the law of war permits. But that law never extends so far as to justify the victor in putting to death an enemy who lays down his arms (§ 140), unless that enemy has been guilty of some crime against him (§ 141).

Resistance carried to the last point never becomes punishable in a subordinate officer except on those occasions when it is manifestly useless; it is then stubbornness, and not firmness or bravery. True bravery has always a rational object in view. Suppose, for instance, that a State has entirely submitted to the conqueror, with the exception of a single fortress, and that there is no help to be looked for from without, nor any ally or neighbor who is concerned about saving the rest of the conquered State. On such an occasion the governor is to be notified of the state of affairs and called upon to surrender his town, and he may be threatened with death if he persists in a defense which is absolutely unavailing, and which can only result in a useless shedding of blood. If he remains immovable he deserves to suffer the punishment with which he has been justly threatened. I suppose that the justice of the war is disputable, and that there is no question of resisting insupportable oppression. For if this governor is clearly upholding a good cause, if he is fighting to save his country from slavery, his fate will be regretted, and men of honor will applaud him for having held firm to the end and chosen to die a free man.

§ 144. Turncoats and deserters.

Turncoats and deserters whom the conqueror finds among his enemies are guilty of a crime against him, and he is undoubtedly justified in putting them to death. But they are not properly to be regarded as enemies; they are rather perfidious citizens, traitors to their country, and their enlistment with the enemy can not take from them that character nor protect them from the punishment which they have merited. However, at the present day, when desertions are unfortunately so common, the number of the offenders makes it in a way necessary to show mercy, and it is quite usual in capitulations to allow the evacuating garrison a certain number of covered wagons in which they hide the deserters.

§ 145. Women, children, the aged, and the sick.

Women, children, feeble old men, and the sick are to be counted among the enemy (§§ 70, 72), and a belligerent has rights over them, inasmuch as they belong to the Nation with which he is at war, and because, as between Nations, rights and claims affect the body of the society, and with it all its members (Book II, §§ 81, 82, 344). But these are enemies who offer no resistance, and consequently the belligerent has no right to maltreat or otherwise offer violence to them, much less to put them to death (§ 140). There is to-day no Nation in any degree civilized which does not observe this rule of justice and humanity. If occasionally an enraged and unrestrained soldier goes so far as to outrage female virtue, or to massacre women, children, and old men, the officers regret such excesses and endeavor to check them, and a wise and humane general even punishes the offenders when he can. But if women wish to be spared they must keep to the duties of their sex, and not assume the position of men by taking up arms. Thus, the Swiss military law, which forbids soldiers to ill-treat women, makes an express exception of those who have committed acts of hostility.(*a*)

§ 146. Ecclesiastics, men of letters, and others.

The same rule applies to ministers of public worship and to men of letters and other persons whose manner of life is wholly apart from the profession of arms. Not that these persons, nor even the ministers of the altar, have necessarily, as a result of their calling, any character of inviolability with respect to the enemy conferred upon them by the civil law. But as they do not resist the enemy by force or violence, they give the enemy no right to use it towards them. Among the ancient Romans the priests bore arms; Julius Cæsar was high-priest; and in Christian times bishops and cardinals have been seen to turn soldier and take the command of armies. In doing so they cast in their lot with the rest of the army, and when thus fighting they certainly did not claim to be inviolable.

§ 147. Husbandmen, and in general all unarmed people.

In former times, when a Nation went to war, and especially when it was attacked, every man able to carry arms became a soldier. However, Grotius(*b*) mentions several States and great generals(*c*) who spared husbandmen in consideration of the usefulness of their labors to mankind. At the present day war is carried on by regular armies; the people, the peasantry, the towns-folk, take no part in it, and as a rule have nothing to fear from the sword of the enemy. Provided the inhabitants submit to him who is master of the country, and pay the contributions demanded, and refrain from acts of hostility, they live in safety as if they were on friendly terms with the enemy; their property rights are even held sacred; the peasants go freely into the enemy camp to sell their provisions, and they are protected as far as possible from the calamities of war. Such treatment is highly commendable and well worthy of Nations which boast of their civilization; it is even of advantage to the enemy. A general who protects unarmed inhabitants, who keeps his soldiers under strict discipline, and who protects the country, is enabled to support his army without trouble and is spared many evils and dangers. If he has any reason for distrusting the peasants and the towns-people he has the right to disarm them and to require hostages from them; and those who wish to be spared the calamities of war should submit to the regulations imposed upon them by the enemy.

§ 148. The right to make prisoners of war.

But all those conquered or disarmed enemies whom sentiments of humanity oblige a general to spare, all those persons, even the women and children, who are subjects of the enemy State, may lawfully be captured and made prisoners, whether for the purpose of preventing them from taking up arms again or with the object of weakening the enemy (§ 138), or, finally, in order that by seizing some woman or child dear to the sovereign he may be induced to accept just terms of peace for the sake of releasing those precious pledges. At the present day, it is true, this last measure is rarely put into practice by the civilized Nations of Europe. Full protection is granted to women and children, and complete liberty to go to and fro as they wish. But this considerate treatment, though certainly commendable, is not of absolute obligation; and if a general decides to refuse it he is not to be accused of violating the laws of war; he may be guided in this matter according as his inter-

---

(*a*) See Simler, De Republ. Helvet.

(*b*) Lib. III, Cap. XI, § 11.

(*c*) Cyrus, Belisarius.

ests may require. If without reason and from mere caprice he denies women that liberty he will be regarded as harsh and brutal, and will be blamed for not conforming to a custom based upon humane motives. But it is possible that he may have good reasons for refusing to attend to considerations of courtesy, or even of pity. If he is seeking to reduce by famine a fortress which it is very important for him to obtain possession of, he may refuse to allow the useless mouths to come out and in so doing he is justified by the law of war. However, great men, when moved with pity, have been known on such occasions to yield to motives of humanity, even against their interests. We have elsewhere spoken of the conduct of Henry the Great during the siege of Paris. Let us add to that noble example the conduct of Titus at the siege of Jerusalem. He wished at first to drive back into the city the starving inhabitants who came out of it, but he could not hold out against the sight of those pitiful wretches, and the promptings of his noble and generous heart prevailed over the maxims of war.

§ 149. Prisoners of war may not be put to death.

When once your enemy has surrendered you have no longer any right over his life (§ 140), unless he gives it to you by some further attack, or unless he has previously rendered himself guilty towards you of a crime deserving death (§ 141). It was, therefore, a dreadful error, an unjust and savage pretension on the part of the ancients, to assert the right of putting to death prisoners of war, even at the hands of the executioner. More just and more humane principles have long since prevailed. Charles I, King of Naples, having defeated and taken prisoner his rival Conradin, had him publicly beheaded at Naples, together with Frederic of Austria, his fellow-prisoner. This barbarous act roused universal indignation, and Peter III, King of Arragon, reproached the cruel Charles for having committed a shameful crime hitherto unheard of among Christian princes.(*a*) However, Charles was dealing with a dangerous rival, who disputed his right to the throne. But even supposing that the claims of his rival were unjust, Charles could have kept him in prison until he should have renounced them, or given securities for his future conduct.

§ 150. How prisoners of war should be treated.

A captor has the right to secure his prisoners, and with that object he may imprison or even put them in chains, if he has reason to fear that they will rise up against him or make their escape. But nothing justifies him in treating them harshly, unless they have rendered themselves personally guilty of some crime against him, in which case he is at liberty to punish them. Apart from this case he should remember that they are men and objects of sympathy. A generous heart feels nothing but compassion towards a defeated and conquered enemy. Let us accord to the Nations of Europe the praise they deserve. It is rare that prisoners of war are ill-treated by them. When we hear the story of the treatment which prisoners of war have experienced on the part of the English and the French, we admire and revere those noble Nations. An even more liberal practice, which equally betokens the honor and the humane spirit of European Nations, is that of releasing an officer on his parole, who thus has the consolation of passing the time of his captivity in his own country, in the midst of his family; and the captor who has released him feels as sure of his prisoner as if he had him confined in irons.

§ 151. Whether prisoners who can not be guarded or fed may be put to death.

In former times the following question would have proved embarrassing: When a captor has a large number of prisoners whom it is impossible to feed or to keep under guard, has he the right to put them to death, or must he let them return to the enemy, thus increasing their strength and exposing himself to the danger of defeat on another occasion? At the present day the question presents no difficulty; such prisoners are released on their parole, and the condition is imposed that they are

---

(*a*) Epist. Petr. Arrag. apud Petr. de Vineis.

not to take up arms for a definite period, or during the continuance of the war; and as it is absolutely necessary that every general have the power to agree to the conditions upon which the enemy will accept his surrender, the terms which he accepts in order to save the lives or liberties of himself and his soldiers are valid, as being made within the scope of his powers (§ 19 and foll.), and his sovereign may not annul them. Several cases of this have occurred during the late war. A number of Dutch garrisons submitted to the condition of not serving against France and her allies during one or two years; a body of French troops, besieged in Lintz, were sent back across the Rhine, on condition that they should not bear arms against the Queen of Hungary until the time fixed. The sovereigns of these armies have stood by the terms agreed upon. But conventions of this kind have their limits, which consist in not encroaching upon the rights of the sovereign over his subjects. Thus, the enemy general may properly impose upon the prisoners whom he releases the condition of not bearing arms against his State until the end of the war, since he might keep them in prison until that time; but he has not the right to require them to renounce forever the liberty of fighting for their country, because once the war is at an end his control over them ceases; and they on their part can not enter into an agreement absolutely contrary to their character of citizens or subjects. If their country abandons them they become free in relation to it, and are justified in abandoning it in turn.

But if we are dealing with a Nation which is at once savage, treacherous, and formidable, shall we send back to it soldiers who, perhaps, will put it in a position to destroy us? When it is a case of choosing between our own safety and that of an enemy, even when prisoner, the answer does not admit of doubt. But before deliberately putting a large number of prisoners to death, two conditions must be fulfilled: firstly, that no promise has been made to spare their lives, and secondly, that the captor is very certain that his safety demands the sacrifice. If prudence will at all permit him either to trust their word or to disregard their bad faith, a generous captor will be led rather by humane consideration than by a policy of timid caution. Charles XII, being encumbered with his prisoners after the battle of Narva, was content to disarm them and send them away free. His enemy, still possessed by the fear which the formidable army of Charles had excited, sent the prisoners at Pultowa into Siberia. The Swedish hero, in his generosity, carried his trust too far; the shrewd monarch of Russia was, perhaps, over-severe in his prudence. But necessity will excuse severity, or rather cause it to be entirely overlooked. When Admiral Anson had captured, near Manila, the rich galleon of Acapulco, he found that his prisoners outnumbered his whole crew; he was forced to confine them in the bottom of the hold, where they suffered greatly.(*a*) But if he had exposed himself to the risk of having his own vessel and his prize recaptured by the enemy, would his humane conduct have justified his imprudence? After his victory at Agincourt, Henry V, King of England, found, or thought he found, himself under the cruel necessity of sacrificing his prisoners to his own safety. "In this universal rout," says Pere Daniel, "a further disaster occurred, which cost the lives of a great number of the French. A remnant of the French vanguard was retreating in some order, and many rallied to it. The English King, seeing them from his position on an eminence, thought they meant to return to the attack. At the same time word was brought to him that his camp, where he had left his baggage, was being attacked. In fact certain noblemen of Picardy, having armed about six

---

(*a*) See the account of his voyage.

hundred peasants, had fallen upon the English camp. Henry, fearing some disastrous reverse, sent his aides-de-camp to all the divisions of the army with orders to put to death all the prisoners. His fear was that if the battle were renewed the necessity of guarding the prisoners would hamper the action of his soldiers, and that the prisoners would rejoin their ranks. The order was executed immediately, and the prisoners were all put to the sword."(*a*) Only the greatest necessity can justify so terrible an execution, and the general is to be pitied who finds himself forced to order it.

§152. Whether prisoners of war may be reduced to slavery.

May prisoners of war be reduced to slavery? Yes, on occasions when it is justifiable to kill them because they have rendered themselves personally guilty of some crime deserving of death. The ancients, consistently with their belief that prisoners of war might be put to death, sold them into slavery. On no occasion when I may not justifiably put my prisoner to death, may I make of him a slave. If I spare his life only to condemn him to a lot utterly at variance with man's nature, our relations are still those of enemies, and he is under no obligations to me. What is life without liberty? If anyone still counts life a favor, when it is spared to him to be spent in chains, be it so; let him accept the gift, submit to his lot, and fulfill its duties. But he must learn those duties from someone else; they have been sufficiently treated of by other authors, and I will add nothing further. As it is, that reproach to mankind has happily been banished from Europe.

§ 153. The exchange and ransom of prisoners.

Prisoners of war, therefore, are held in captivity either to prevent them from rejoining the enemy or to obtain from their sovereign a just satisfaction as the price of their liberty. Those who are held with the latter object in view need not be released until satisfaction has been obtained. Where prisoners are held to prevent them from rejoining the enemy, the captor who is waging a just war may, if he so chooses, hold them until the end of the war; and when he releases them he may justly exact a ransom, either as an indemnity, when peace is concluded, or, if the war continues, as a means of weakening the finances of the enemy at the same time that the soldiers are restored. The Nations of Europe, consistently with their continual efforts to alleviate the hardships of war, have introduced humane and useful customs with respect to prisoners. Even during the progress of the war prisoners are exchanged or are ransomed; and the matter is generally settled beforehand by a cartel. However, if a Nation finds a considerable gain in leaving its soldiers prisoners in the hands of the enemy during the war, rather than restore to the enemy those whom it holds captive, there is nothing to prevent it from following the policy most to its interest, if it is not bound by a cartel. A case of this kind would arise when a State having large military forces is at war with a Nation whose strength consists far more in the bravery than in the number of its soldiers. Peter the Great would have gained little by restoring the Swedish prisoners for an equal number of Russians.

§ 154. The state is bound to procure the release of its subjects.

But the State is bound to procure, at its own expense, the release of its citizens and soldiers who are held as prisoners of war, when it can do so without danger, and when it has the means. It was in the service of the State and when fighting for its cause that they encountered their misfortune; and for that reason the State should also pay the expenses of their maintenance during the time of their imprisonment. In former times prisoners of war were obliged to ransom themselves, but then the ransom was paid to the soldiers or officers by whom the prisoners were taken. The modern practice is more in accord with reason and justice. If a State can not obtain the release of its subjects during the war, at least it must, if possible, make

---

(*a*) Histoire de France, Règne de Charles VI.

their deliverance an article of the treaty of peace. This is a duty which the State owes to those who have exposed themselves for its sake. However, it must be admitted that every Nation may, after the example of the Romans, and for the purpose of rousing its soldiers to the most vigorous resistance, pass a law to prohibit prisoners of war from ever being ransomed. Were the whole society of Nations to agree to such measures there could be no complaint. But the law is very severe and could hardly suit any but those ambitious heroes who are resolved to sacrifice everything in order to become masters of the world.

§155. Whether it is lawful to have an enemy assassinated or poisoned.

Since in this chapter we are treating of the rights which war confers against the person of the enemy, it is in place here to consider a famous question on which authors are divided. The point is to determine whether it is lawful to employ means of any sort in order to take away the life of an enemy, whether it is lawful to assassinate or to poison him. Certain writers have said that if we have the right to deprive a person of life, the manner of doing so is a matter of indifference. Strange principles, fortunately condemned by even the vaguest ideas of honor! The civil law gives me the right to check a slanderer, and to obtain my property from one who unjustly holds it from me; but is it a matter of indifference what steps I take to enforce my right? Nations may take up arms to obtain justice when it is refused them; would it be a matter of no concern to human society if they were to resort to revolting measures, which might spread desolation over the whole world, and from which the most just and equitable of sovereigns, though supported by the majority of other princes, would be unable to protect himself?

But in order to reason clearly on this question we must first of all avoid confusing assassination with surprises, which are, doubtless, perfectly lawful in warfare. When a resolute soldier steals into the enemy's camp at night and makes his way to the general's tent and stabs him, he does nothing contrary to the natural laws of war, nothing, indeed, but what is commendable in a just and necessary war. Mutius Scævola was praised by all the great men of ancient times, and Porsena himself, whom he sought to kill, commended his courage.(*a*) Pepin, the father of Charlemagne, crossing the Rhine with a single soldier, went and killed his enemy in his chamber.(*b*) If anyone has absolutely condemned such bold strokes it was only done with the object of flattering those in high position who would wish to leave to soldiers and subordinates all the danger of the war. It is true that those who commit such deeds are ordinarily punished by a painful death; but this is because the prince or the general who is thus attacked acts on his own rights in turn; he looks to his safety, and endeavors to deter his enemies by the dread of torture from attacking him otherwise than by open force. He may thus regulate his severity towards an enemy according to the needs of his own safety. It still remains true that it would be much more commendable if both parties were to abandon every form of attack which puts the enemy under the necessity of resorting to torture as a means of self-defense. This might become an established custom, in the form of a conventional law of war. The magnanimous generals of the present day find such deeds little to their taste, and they only attempt them on those rare occasions when the safety of their country requires the step. As for those six hundred Spartans who, under the leadership of Leonidas, broke into the camp of the enemy and went straight to the tent of the King of Persia,(*c*) their attempt was warranted by the ordinary rules of warfare, and did not justify that King in treating them more severely than other enemies. In order to protect oneself from such sudden attacks it is sufficient to keep careful guard, and it would be unjust to resort to the fear

---

(*a*) Livy, Lib. II, Cap. XII; Cicero, Pro P. Sextio; Valer. Maxim., Lib. III, Cap. III; Plutarch, Life of Publicola.

(*b*) See Grotius, Lib. III, Cap. IV, § 18, n. 1.

(*c*) Justin. Lib. II, Cap. XI, § 15.

of torture, which is, accordingly, reserved for those who gain admittance by stealth, whether a single person or a small number, and especially for those who make use of a disguise.

Hence I mean by assassination a murder committed by means of treachery, whether the deed be done by persons who are subjects of him who is assassinated, or of his sovereign, and who are therefore traitors, or whether it be done by any other agent who makes his way in as a suppliant or refugee, or as a turncoat, or even as an alien; and I assert that the deed is a shameful and revolting one, both on the part of him who executes and of him who commands it. Why else do we say that an act is criminal and contrary to the Law of Nature but because the act is destructive of human society, and if regularly done would be disastrous to mankind? Now, what scourge could be more terrible in its effect upon the human race than the practice of procuring the assassination of one's enemy by means of a traitor? Besides, were the act lawful, no prince, however virtuous or secure in the friendship of the great majority of sovereigns, could guard sufficiently against it. Had Titus reigned in the time of the Old Man of the Mountain, though he had made all mankind happy, though true to the principles of peace and justice he had won the respect and affection of all sovereigns, yet at the first quarrel which the Prince of the Assassins might choose to have with him that universal affection could not have saved him, and the human race would have lost its "darling." Let it not be said that these extraordinary measures are only lawful in a good cause. In all wars both parties claim to have justice on their side. Whoever, therefore, by his example, contributes to the introduction of so disastrous a practice declares himself the enemy of the human race and merits the curse of all ages.(*a*) The assassination of William, Prince of Orange, was universally abhorred, although the Spaniards regarded him as a rebel. And these same Spaniards denied, as an atrocious calumny, the charge of having had the least share in the assassination of Henry the Great, although he was preparing to carry on against them a war which might have shaken their monarchy to its very foundations.

The crime of administering poison by treacherous means is in a way even more revolting than that of assassination, since it would be more difficult to guard against it, and its effects are more terrible; accordingly it has been more generally abhorred. Grotius has cited many condemnations of it.(*b*) The consuls Caius Fabricius and Quintus Æmilius rejected with horror the proposal of the physician of Pyrrhus, who offered to poison his master, and they even warned that prince to be on his guard against the traitor, adding haughtily, "It is not to ingratiate ourselves with you that we give you this information, but to avoid the disgrace which your death might bring upon us."(*c*) And they very properly observe in the same letter that it is for the common interest of all nations not to set such examples. (*d*) The Roman Senate held it as a principle that war was to be carried on with arms, not with poison.(*e*) Even in the reign of Tiberius the offer of the Prince of the Catti to poison Arminius if the drug were sent to him was rejected, and the reply was made "that the Romans revenged themselves upon their enemies by open force, and not by dishonorable methods and secret plots."(*f*) Tiberius thus glories in imitating

---

(*a*) See the dialogue between Cæsar and Cicero, in the Mélanges de Littérature et de Poësies.

(*b*) Lib. III, Cap. IV, § 15.

(*c*) *Ὀυδὲ γὰρ ταῦτα σῇ Χάριτι μηνύομεν, ἀλλ᾽ ὅπως μὴ τὸ σον πάθος ἡμῖν διαβολὴν ἐνέγκῃ* . . . . Plutarch, Life of Pyrrhus.

(*d*) Sed communis exempli et fidei ergo visum est, uti te salvum velimus; ut esset, quem armis vincere possemus. (Aul. Gell. Noct. Attic., Lib. III, Cap. VIII.)

(*e*) Armis bella, non venenis, geri debere. (Valer. Max., Lib. VI, Cap. V, Num I.)

(*f*) Non fraude, neque occultis, sed palam et armatum populum Romanum hostes suos ulcisci. (Tacitus Annales, Lib. II, Cap. LXXXVIII.)

the virtue of the ancient Roman commanders. This example is all the more remarkable in that Arminius, by means of treachery, had destroyed Varus and three Roman legions. The Senate, and Tiberius himself, thought that it was not lawful to make use of poison even against a perfidious enemy and by way of retaliation.

Assassination and poisoning are, therefore, contrary to the laws of war, and are alike forbidden by the natural law and the consent of civilized Nations. The sovereign who makes use of such execrable means should be regarded as an enemy of the human race, and all Nations are called upon, in the interest of the common safety of mankind, to join forces and unite to punish him. In particular, an enemy who has been the object of his detestable practices is justified in giving him no quarter. Alexander the Great declared "that he was determined to take the most extreme measures against Darius, and no longer treat him as an enemy in lawful war, but as a poisoner and an assassin."(*a*)

The interest and the safety of those in command, far from allowing them to authorize such practices, call for the greatest care on their part to prevent the introduction of them. Eumenes wisely said "that he did not think any general would want to obtain a victory by the use of means which might in turn be directed against himself."(*b*) And it was on the same principle that Alexander condemned the act of Bessus, who had assassinated Darius.(*c*)

§156. Whether poisoned weapons may be used.

The use of poisoned weapons may be excused or defended with a little more semblance of right. There is at least no treason or secret plotting connected with them. But their use is none the less prohibited by the natural law, which forbids us to multiply the evils of war indefinitely. It is, indeed, necessary to strike down your enemy in order to overcome his designs; but once he is disabled, is there any need that he should inevitably die of his wounds? Moreover, if you poison your weapons, your enemy will do the same, and thus without gaining any advantage over him, you will merely have added to the cruelties and horrors of the war. Necessity alone justifies Nations in going to war; and they should all refrain from, and as a matter of duty oppose, whatever tends to render war more disastrous. Hence it is with good reason, and in accordance with their duty, that civilized Nations have put among the laws of war the rule forbidding the use of poisoned weapons;(*d*) and in the interest of their common safety all Nations are warranted in repressing and punishing the first attempt to violate that law.

§157. Whether springs may be poisoned.

There is an even more general agreement in condemning the poisoning of streams, springs, and wells. Certain authors give as a reason that thereby innocent persons, who are not our enemies, may be killed. The reason is an additional one against the practice, but it is not the prime one, for we do not refrain from firing upon an enemy vessel because there are neutral passengers on board. But while the use of poison is forbidden, it is perfectly lawful to turn aside a stream, to cut it off at its source, or in any other way to render it useless, in order to force the enemy to surrender.(*e*) The measure is less severe than that of armed force.

§ 158. Dispositions which should be maintained towards the enemy.

Before concluding the subject of what it is lawful to do to the person of the enemy, let us say a word of the dispositions which should be maintained towards him. They might, indeed, be inferred from what we have said thus far, and especially from the first chapter of the second book. Let us never forget that our enemies are men. Although we may be under the unfortunate necessity of prose-

---

(*a*) Quintus Curtius, Lib. iv, Cap. xi, Num. 18.

(*b*) Nec Antigonum, nec quemquam ducum, sic velle vincere, ut ipse in se exemplum pessimum statuat. (Justin., Lib. xiv, Cap. i, Num. 12.)

(*c*) Quem quidem (Bessum) cruci adfixum videre festino, omnibus regibus gentibusque fidei, quam violavit, meritas pœnas solventem. (Quintus Curtius, Lib. vi, Cap. iii, Num. 14.)

(*d*) See Grotius, Lib. iii, Cap. iv, § 16.

(*e*) Grotius, *ibid.*, § 17.

cuting our right by force of arms, let us never put aside the ties of charity which bind us to the whole human race. In this way we shall defend courageously the rights of our country, without violating those of humanity. Let us be brave without being cruel, and our victory will not be stained by inhuman and brutal acts. Marius and Attila are now detested, whereas we can not help but admire and love Cæsar—his generosity and his clemency almost make amends for the injustice of his undertaking. Magnanimity and forbearance are more to the honor of a conqueror than his courage, for they indicate more surely a noble mind. In addition to the honor which attends those virtues, the humane treatment of an enemy has often resulted in material and immediate gain. Leopold, Duke of Austria, when besieging Soleure, in the year 1318, threw a bridge over the Aar and placed upon it a large body of troops. Soon after the river rose to an unusual height and carried away the bridge and those who were upon it; whereupon the besieged ran to the help of the victims and saved the greater number of them. Leopold, being struck with this mark of generosity, raised the siege and made peace with the city.(*a*) The Duke of Cumberland seems to me to have shown his greatness more after his victory at Dettingen(*b*) than in the heat of battle. As he was about to have his wounds dressed a French officer, much more dangerously wounded than he, was carried by; whereupon the Duke immediately ordered his surgeon to leave him in order to assist his wounded enemy. If men in high station could know what respect and affection such actions would win for them they would endeavor to imitate them, even when not led to do so from high-minded motives. At the present day the Nations of Europe almost always carry on war with great forbearance and generosity. These dispositions have given rise to several commendable practices, which exhibit often a high degree of courtesy. Refreshments are sometimes sent to a besieged governor; and the besieger ordinarily refrains from firing upon the quarters of the King or general. We can but gain from such forbearance when dealing with a generous enemy; but we are not bound to observe it except in so far as it does not hurt the cause we are defending, and it is clear that a wise general will be guided in that respect by circumstances, by what is needed to secure the safety of the State, by the greatness of the danger, and by the character and conduct of the enemy. If a weak Nation, or a town, is attacked by a fierce conqueror who threatens to destroy it, must it refrain from firing upon his quarters? On the contrary, that is the very point to which, if possible, all its shots should be directed.

§ 159. Consideration for the person of the enemy's king.

In former times he who succeeded in killing the King or general of the enemy was commended and rewarded; we know the honors attending the *spolia opima*. Nothing could have been more natural than such an attitude; for the ancients almost always fought for the very existence of the State, and frequently the death of the leader put an end to the war. At the present day a soldier would not dare, ordinarily at least, to boast of having killed the enemy's King. It is thus tacitly agreed among sovereigns that their persons shall be held sacred. It must be admitted that where the war is not a violent one, and where the safety of the State is not at stake, such respect for the person of the sovereign is entirely commendable and in accordance with the mutual duties of Nations. In such a war, to take away the life of the sovereign of the hostile Nation, when it could be spared, would be to do a greater injury to that Nation than is, perhaps, necessary for the successful settlement of the dispute. But it is not a law of war that the person of the enemy's King must be spared on every occasion, and the obligation to do so only exists when he can easily be made prisoner.

(*a*) De Watteville, Hist. de la Confédération Helvêtique, Tom. 1, pp. 126, 127.

(*b*) In 1743.

CHAPTER IX.

The Law of War with Respect to the Property of the Enemy.

§ 160. Principles of the right of a belligerent over the property of the enemy.

The State which takes up arms in a just cause has a twofold right against its enemy: (1) The right to obtain possession of its property withheld by the enemy, to which property must be added the expenditures incurred in obtaining it, the cost of the war, and indemnity for damages; for if the State were obliged to bear such expenses and losses it would not obtain the full amount of its property or of the debt due it. (2) It has the right to weaken the enemy, and to take from him the means of resistance, in order to disable him from maintaining his unjust position (§ 138). From this twofold source are derived all the rights which war gives us over the property of the enemy. I refer to ordinary cases where the property of the enemy is the chief object in view. On certain occasions the right of punishing an enemy gives rise to new rights over his property, as over his person; of these we shall speak presently.

§ 161. The right to take possession of it.

The enemy may be deprived of his property and of whatever may add to his strength and put him in a position to make war. Every belligerent pursues this object in the manner best suited to him. He takes possession, when he can, of the enemy's property, and confiscates it; and thereby he not only reduces the strength of his opponent, but increases his own, and obtains at least a partial indemnity, or equivalent, whether for the object itself of the war or for the expenditures and losses attendant upon it; he thus obtains justice for himself.

§ 162. Property taken from the enemy by way of punishment.

The right to security frequently authorizes a State to punish acts of injustice or violence, and is a further ground for depriving an enemy of some part of his property. It is more humane to punish a Nation in this way than to make the penalty fall upon the persons of the citizens. To this end the Nation may be deprived of valuable property, such as rights, towns, or provinces. But all wars do not give just grounds for inflicting punishment. A Nation which has supported a bad cause in good faith and with moderation is more deserving of the pity than of the anger of a generous conqueror; and in a doubtful case it should be presumed that the enemy is in good faith (Introd., § 21; Book III, § 40). It is only where the injustice of his cause is clear and devoid of even a semblance of right, or where the conduct of the enemy has been marked by grievous outrages, that his opponent has the right to punish him; and on every occasion the punishment should be limited to what is required for the safety of the injured State and of other Nations. Mercy should be the rule, as far as prudence will allow, and that lovable virtue is almost always of more value to its possessor than inflexible sternness. The mercy shown by Henry the Great came wonderfully to the aid of his valor when that good Prince was forced to undertake the conquest of his Kingdom. By his arms alone he would only have subjected his enemies; his kindness made of them devoted subjects.

§ 163. Property held in order to force the enemy to give due satisfaction.

Finally, a belligerent takes possession of what belongs to the enemy, of his towns and his provinces, in order to bring him to reasonable terms and to force him to accept peace on a just and permanent basis. He thus takes much more than what belongs to him, or than what he claims to belong to him; but this is done with the intent of restoring the excess by the treaty of peace. In the late war, for instance, the King of France asserted that he made no claims to anything on his own account, and in fact, he restored all his conquests by the Treaty of Aix-la-Chapelle.

§ 164. Booty.

While towns and land taken from the enemy are called *conquests*, all movable property so taken comes under the head of *booty*. This booty, no less than the conquests, naturally belongs to the sovereign who is carrying on the war, for he alone has claims upon the enemy which warrant him in taking possession of and confiscating the enemy's property. His soldiers, and even his auxiliary troops, are only instruments which he makes use of to assert his rights. He maintains and pays them, so that whatever they do is done in his name and for him. There is therefore no difficulty in deciding the question, even with respect to auxiliaries; for if the latter are not leagued with him in the war it is not carried on in their interest, and they have no more right to the booty than to the conquests. But the sovereign may grant to the troops such part of the booty as he pleases. At the present day they are allowed whatever they can take on certain occasions when the general permits pillaging; likewise the spoil left by the enemy upon the field of battle, the pillage of a captured camp, and sometimes that of a town which has been taken by assault. In several armies a soldier is also allowed to keep whatever he can take from the enemy's troops when he is off on a detachment, with the exception of artillery, ammunition, food, and provender taken from storehouses and convoys, all of which are applied to the needs and use of the army. And when the regular troops of an army are allowed certain booty it would be unfair to exclude the auxiliaries from it. Among the Romans the soldier was obliged to put all the booty he had taken into a public stock; the general then caused this stock to be sold, and distributed part of the proceeds to the soldiers, according to their rank, and sent the rest to the public treasury.

§ 165. Contributions.

Instead of pillaging the country and other defenseless places, a custom has been introduced which is at once more humane and more beneficial to the sovereign carrying on the war, namely, the custom of levying *contributions*. Whoever carries on a just war has the right to make the enemy's country contribute to the support of his army and to all the expenses of the war; he thus obtains a part of what is due him, and the subjects of the enemy, by submitting to the contributions imposed, have their property protected from pillage and their country saved from harm. But if a general wishes to maintain a stainless reputation he must be moderate in his demands and proportion the contributions that he levies according to the ability of the people to pay. If he is excessive in his demands he can not escape the reproach of harshness and inhumanity; he may exhibit less barbarity than if he were engaged in plunder and destruction, but he manifests greater avarice or greed. Instances in which generals have shown kindness and forbearance can not be too often cited. A very commendable one took place during the long wars carried on by France under the reign of Louis XIV. The belligerent sovereigns, seeing that it was their duty and their interest to protect their respective countries, made at the beginning of the war treaties providing that the contributions should be levied on a reasonable basis; they determined in what territories contributions might be levied, the amount of them, and the conduct to be observed by the persons sent to collect them. It was stipulated in these treaties that no body of troops under a certain number might penetrate into the enemy's country beyond the limits agreed upon under penalty of being treated as *freebooters*. They thereby prevented a great many outrages and disorders which afflict the people and almost always result in mere loss to the sovereigns who are at war. Why has so excellent an example not been more generally followed?

§ 166. Destruction of property.

If it is lawful to take away the property of an unjust enemy, either in order to weaken him (§ 161) or to punish him (§ 162), the same reasons authorize a belligerent in destroying what he can not conveniently carry off. Thus it is that a belligerent lays waste to a country and destroys food and provender, in order that the enemy may not be able to subsist there; he sinks the enemy's ships when he can not capture them or carry them off. Such measures are taken in order to attain the object of the war; but they should be used with moderation and only when necessary. Those who tear up vines and cut down fruit trees, unless their object be to punish the enemy for some offense against the Law of Nations, are to be regarded as savages; they render a country desolate for many years and go far beyond the needs of their own safety. Such conduct is dictated not by prudence, but by hatred and passion.

§ 167. Devastation by fire and sword.

However, on certain occasions matters are carried further still. A country is completely devastated, its towns and villages sacked, and everything delivered up to fire and sword. Even when a general is forced to take them, such extreme measures are dreadful, but they are savage and horrible excesses when he resorts to them without necessity. They may, however, be authorized on two grounds: (1) The necessity of punishing an unjust and barbarous Nation, of putting a stop to its cruelty, and preventing acts of depredation. Who can doubt that the King of Spain and the Italian States would be justified in destroying to their very foundations those maritime towns of Africa, those haunts of pirates who are constantly molesting their commerce and afflicting their subjects? But who will go to such an extreme for the sole purpose of punishing the hostile sovereign, who can only feel the punishment indirectly? How cruel it would be to afflict an innocent people in order to reach their sovereign! The same Prince whose firmness and just anger were commended at the bombardment of Algiers was accused of haughtiness and cruelty after that of Genoa. (2) A country is laid waste, or rendered uninhabitable, in order to make it serve as a barrier to protect his frontier against an enemy whom the sovereign perceives he can not otherwise check. The measure is a harsh one, it is true, but why should it not be taken at the expense of the enemy when with the same object in view a sovereign will properly resolve to ruin his own provinces? The Czar Peter the Great, when retreating before the formidable Charles XII, laid waste more than eighty leagues of his own territory in order to check the onrush of a torrent against which he could not stand. Famine and exhaustion finally weakened the Swedes, and the Russian monarch reaped at Pultowa the fruits of his prudent sacrifices. But violent remedies should be sparingly applied, and their use is only justified by reasons of proportionate gravity. A prince who should, without necessity, imitate the conduct of the Czar would commit a crime against his people; and if he were to do the like in the enemy's country, when not impelled by necessity or strong reasons, he would become the scourge of mankind. In the last century (*a*) the French laid waste and burnt the Palatinate. A universal outcry arose against this method of carrying on war. In vain did the French court justify its action on the ground of protecting its frontiers. The devastation of the Palatinate contributed little to that end, and the evident motive was the vengeance of a cruel and haughty minister.

§ 168. What property should be spared.

For whatever cause a country be devastated, those buildings should be spared which are an honor to the human race and which do not add to the strength of the enemy, such as temples, tombs, public buildings, and all edifices of remarkable beauty. What is gained by destroying them? It is the act of a declared enemy of the human race thus wantonly to deprive men of these monuments of art and models of architecture; so Belisarius told Totila, King of the Goths.(*b*) We still abhor the acts of those barbarians who, in overrunning the Roman Empire, destroyed so

---

(*a*) In 1674, and again, in a more terrible manner, in 1689.
(*b*) See his letter in Procopius. It is cited by Grotius, Lib. III, Cap. XII, § 2, not. 11.

many wonders of art. However justly indignant the great Gustavus was against Maximilian, Duke of Bavaria, he rejected with scorn the advice of those who wished to destroy the magnificent palace of Munich, and he took particular care to preserve that building.

However, if in order to carry on the operations of the war, or to push forward the plans of a siege, it is necessary to destroy buildings of that character, we have an undoubted right to do so. The sovereign of the country, or his general, does not scruple to destroy them when the needs or the policy of war call for such a step. The governor of a besieged town burns the suburbs to prevent the besiegers from encamping in them. No one thinks of blaming a general for devastating gardens, vineyards, and orchards, in order to locate his camp on the spot and throw up an entrenchment. If he thereby destroys some work of art it is an accident, an unfortunate consequence of the war; and he will not be blamed except on those occasions when he could have camped elsewhere without any inconvenience.

§ 169. The bombardment of towns. It is difficult to spare the finest buildings when a town is bombarded. At the present day the besieger ordinarily limits himself to battering the ramparts and defenses of the town, and he does not proceed without urgent reasons to the extremity of destroying the town by the use of bombs and hot shot. But he is nevertheless warranted by the laws of war in taking such extreme measures when he is unable otherwise to reduce an important stronghold, on which depends the success of the war, or which enables the enemy to make dangerous attacks upon us. Finally, such measures are taken when we have no other means of forcing an enemy to carry on war more humanely, or of punishing him for some other excesses. But it is only with reluctance, and as a last resort, that good princes make use of a right of so stern a nature. In the year 1694 the English bombarded several maritime towns of France, whose privateers had done serious injury to the commerce of Great Britain. But the virtuous and worthy consort of William III was little pleased with the news of what her fleet had done; she expressed regret that war should have rendered such measures necessary, adding that she hoped that operations of that kind would be regarded with such abhorrence that for the future both sides would abandon them.(*a*)

§ 170. Demolition of fortresses. Fortresses, ramparts, and fortifications of every kind are built solely for use in war; consequently nothing could be more natural or more lawful for a belligerent than to raze those which he does not propose to hold. He thereby weakens his enemy to that extent, and yet does not involve innocent persons in the enemy's losses. This was the great advantage which France drew from her victories in a war in which she did not aim at making conquests.

§ 171. Safeguards. Safeguards are given to lands and to houses which the belligerent wishes to spare, either out of pure favor or on condition of a contribution. These consist of soldiers who protect the property from the belligerent's own army by showing orders to that effect from the general. Their persons are to be held inviolable by the enemy, who may not attack them, since they are at their post for the charitable purpose of protecting his subjects. They should be shown the same respect that is shown to the escort given to a garrison, or to prisoners of war, when sent back to their own country.

§ 172. General rule in limitation of the injury which may be done to the enemy. What we have said is sufficient to give a general idea of the moderation with which, in the most just war, a belligerent should use the right to pillage and devastate the enemy's country. Apart from the case in which there is question of punishing an enemy, the whole may be summed up in this general rule: All acts of hostility which injure the enemy without necessity, or which do not tend to procure

---

(*a*) Histoire de Guillaume III, Liv. VI, Tom. II, p. 66.

victory and bring about the end of the war, are unjustifiable, and as such condemned by the natural law.

§ 173. Rule of the voluntary law of nations on the same subject.

But as between Nations such acts are necessarily tolerated to a certain point and suffered to go unpunished. How could it be determined accurately just how far it was necessary on a given occasion to carry hostilities, in order to bring about the successful termination of the war? And even though this could be determined, Nations recognize no common judge, and each decides as to what conduct its duties require of it. Open the door to continual accusations of excesses in the conduct of war, and you will only multiply complaints and embitter more and more the minds of the belligerents; fresh injuries will be continually arising, and the war will not cease until one or the other of the parties be destroyed. Hence, as between Nation and Nation, we must lay down general rules, independent of circumstances and of certain and easy application. Now, we can only arrive at such rules by considering acts of hostility in the abstract and in their essential character. Hence, just as with respect to hostilities against the person of the enemy the voluntary Law of Nations limits itself to forbidding acts that are essentially unlawful and obnoxious, such as poisoning, assassination, treason, the massacre of an enemy who has surrendered and from whom there is nothing to fear, so, with respect to the present question, the same law condemns every act of hostility which, in its own nature and independently of circumstances, contributes nothing to the success of our arms and neither increases our strength nor weakens the enemy. On the other hand, it permits or tolerates every act which in its essential nature is adapted to attaining the end of the war; and it does not stop to consider whether the act was unnecessary, useless, or superfluous in a given case unless there is the clearest evidence that an exception should have been made in that instance; for where the evidence is clear freedom of judgment can not be exercised. Thus it is not, generally speaking, contrary to the laws of war to plunder and lay waste to a country. But if an enemy of greatly superior forces should treat in this manner a town or province which he might easily have held possession of, as a means of obtaining just and advantageous terms of peace, he would be universally accused of waging war in a barbarous and uncontrolled manner. The deliberate destruction of public monuments, temples, tombs, statues, pictures, etc., is, therefore, absolutely condemned even by the voluntary Law of Nations, as being under no circumstances conducive to the lawful object of war. The pillage and destruction of towns, the devastation of the open country by fire and sword, are acts no less to be abhorred and condemned on all occasions when they are committed without evident necessity or urgent reasons.

But as an attempt might be made to excuse these excesses, as being a punishment merited by the enemy, let us add that by the natural and voluntary Law of Nations only the most serious offenses against the Law of Nations may be punished in this manner. And even then it is always noble to listen to the voice of charity and mercy when it is not absolutely necessary to use severity. Cicero condemns the destruction of Corinth for improper treatment of the Roman ambassadors, since Rome was able to secure respect for its ministers without resorting to such extreme measures.

CHAPTER X.

Faith Between Enemies; the Use of Stratagems and Deceit; the Employment of Spies, and Some Other Practices.

§ 174. Faith should be sacred as between enemies.

Fidelity to promises and to treaties is the basis of the peace of Nations, as we have shown in a separate chapter (Book II, Chap. XV). This good faith is sacred among men, and is absolutely essential to their common welfare. Are they to be dispensed from keeping it towards an enemy? It would be an error equally abhorrent and disastrous to imagine that all duties cease and all ties of humanity are broken when two Nations go to war. Because they are reduced to the necessity of taking up arms for the defense and the maintenance of their rights, men do not therefore cease to be men. They are still subject to the Laws of Nature; otherwise there would be no laws of war. Even he who carries on against us an unjust war is still a man and must be treated as such. But if a conflict arises between our duties to ourselves and those which bind us to other men, the right of self-protection warrants us in taking against that unjust enemy such steps as are necessary to check him or bring him to reason. But all those duties, the exercise of which is not necessarily suspended by this conflict, continue in full force and are binding upon us both with respect to the enemy and to all other men. Now, the obligation of keeping faith, far from ceasing in time of war because of the precedence to be given to duties towards oneself, becomes more necessary than ever. There are a thousand occasions during the actual course of the war when, for the sake of setting bounds to its fury and to the disasters which accompany it, the common interest and the welfare of both belligerents require that they be able to agree together on certain things. What would become of prisoners of war, of garrisons which capitulate and towns which surrender, if the word of an enemy could not be relied upon? War would degenerate into cruel and unrestrained acts of violence, and there would be no limit to its calamities. How could it ever be brought to an end and peace re-established? If there were no longer any faith between enemies, the only certain end to a war would be the complete destruction of one of the parties. The smallest dispute or the most insignificant quarrel would bring on a war like that which Hannibal waged against the Romans, in which the parties fought not for some province, nor for a more extended sovereignty, nor for the triumph of victory, but for the very existence of their State.(*a*) It is, therefore, indisputable that fidelity to promises and to treaties should be regarded as something sacred, in war as in peace, between enemies as well as between Nations on terms of friendship.

§ 175. What treaties are to be observed between enemies.

Conventions and treaties are broken or annulled when war breaks out between the contracting parties, either because such agreements imply a state of peace, or because each party, having the right to deprive the enemy of his property, may take from him such rights as have been given him by treaties. However, an exception is to be made of those treaties which contain provisions that are to take effect in the event of war; as, for example, a provision regulating the time to be given to the subjects of either party to withdraw from the other's territory, a provision by which the parties mutually guarantee the neutrality of a town or a province, etc. Since the parties intend by these treaties to regulate their conduct in the event of a quarrel, they renounce the right to annul them by the declaration of war.

(*a*) De salute certatum est.

For the same reason a belligerent is bound to observe whatever promises he may have made to the enemy during the course of the war, for in treating with the enemy while he is actually at war with him he necessarily, though tacitly, renounces the power to break the agreement as a means of indemnification and because of the war, just as he annuls preceding treaties; otherwise nothing would be gained by treating with the enemy and it would be absurd to make the attempt.

§ 176. On what occasions they may be broken.

But as with all other compacts and treaties, conventions made during the war contain the tacit condition of mutual observance (Book II, § 202). A belligerent is no longer bound by them where they have been first violated by the enemy; and even when there is question of two separate conventions which have no connection with each other, although it is never lawful to act perfidiously because he is dealing with an enemy who on another occasion has failed to keep his word, the belligerent may, nevertheless, suspend the execution of a promise and hold back what he has agreed to give, as a sort of security, in order to force the enemy to repair his breach of faith. Thus, at the taking of Namur, in 1695, the King of England ordered the arrest of Marshal de Bouflers and, in spite of the terms of surrender, held him prisoner, in order to force France to make reparation for the violation of the capitulations of Dixmude and Deinse.(*a*)

§ 177. Lies.

Good faith does not consist solely in keeping our promises, but also in not deceiving the enemy on those occasions when, for one reason or another, we are bound to speak the truth. This raises a question which in former times was warmly debated, and appeared quite difficult at a time when incorrect and vague ideas as to what constituted a lie prevailed. Many persons, and especially the theologians, looked upon truth as a sort of divinity, to which, for its own sake, and independently of its effects, men owed a certain inviolable respect; they condemned absolutely all language contrary to the thought of the speaker; they asserted that, on every occasion when a man could not be silent, he should speak the truth according to the best of his knowledge, and should sacrifice to their divinity his dearest interests, rather than fail in respect to her. But philosophers of more exact and profound knowledge have cleared up that confused notion, which led to such erroneous results. They have recognized that truth should, in general, be respected, as being the soul of human society and the basis of confidence between men in their mutual intercourse; and that, in consequence, a man should not lie even in indifferent matters, for fear of lessening the respect due to truth in the abstract and of injuring himself by causing his word to be doubted even when he speaks seriously. Now, in thus basing the respect due to truth upon its effects, they were advancing in the right direction, and thereafter it was easy to distinguish between those occasions on which a man is bound to speak the truth, or to manifest his thought, and those on which he is not so bound. The term *lies* is limited to words which a man speaks contrary to his thought on those occasions when he is under obligation to speak the truth; and another name, in Latin *falsiloquium*, is given to untrue statements, made to persons who, in the particular case, have no right to require that the truth be told them.

These principles having been laid down, it is not difficult to point out on what occasions it is necessary to speak the truth to the enemy and when it is lawful to lie to him. Whenever we have expressly or tacitly pledged ourselves to speak the truth to him, we are indispensably bound to do so by that good faith the inviolability of which we have just set forth. This is the case in conventions and treaties,

---

(*a*) Histoire de Guillaume III, Tom. II, p. 148.

where the tacit agreement to speak the truth is absolutely essential; for it would be absurd to say that, by treating with the enemy, we did not mean to agree not to deceive him, for in that case the treaty would be a mere mockery and would amount to nothing. Again, we must speak the truth to the enemy on all occasions when we are under a natural obligation to do so by the laws of humanity, that is to say, when the success of our arms and when our duties towards ourselves are not in conflict with the common duties of humanity and do not suspend the obligation to fulfill them in the case in hand. Thus, when a captor returns prisoners who have been ransomed or exchanged, it would be infamous on his part to put them on the worst road, or on a dangerous one; likewise, when the prince or general of the enemy asks for news of some woman or child dear to him, it would be disgraceful to deceive him.

§ 178. Stratagems and deceit.

But when, either by falsehood on occasions when we are not pledged to speak the truth or by some feint, we can deceive the enemy and gain an advantage in the war which it would be lawful to obtain by open force, there is no question that we may do so. Nay, as charity requires us to prefer the least severe methods in the prosecution of our rights, if by some stratagem or feint in which no perfidy is involved a belligerent can obtain possession of a fortress, surprise the enemy, and overcome him, it is better, it is in truth more commendable, to succeed by such means than by a bloody siege or the slaughter of battle. But this desire to avoid the shedding of blood never warrants us in resorting to perfidy, the use of which would be attended with too disastrous consequences, and would deprive sovereigns, when once at war, of all means of treating together and of restoring peace (§ 174).

Deceptions practised upon the enemy, without perfidy, whether by word or act, and snares laid for him in the exercise of the rights of war, are *stratagems;* their use has always been recognized as lawful, and has often constituted the glory of the greatest generals. When William III, King of England, found out that one of his secretaries was giving full information to the enemy general, he had the traitor secretly arrested and forced him to write to the Duke of Luxembourg that on the following day the allies would go on a general foraging expedition, supported by a large body of infantry with artillery, and the King took advantage of this ruse to surprise the French army at Steinkirk. But owing to the activity of the French general and to the bravery of his troops, the plan so skilfully laid did not meet with success.(*a*)

In the use of stratagems we must respect not only the good faith due to an enemy, but also the rights of humanity, and we must be careful not to do anything which as a practice would be hurtful to mankind. It is reported that since the commencement of the present hostilities between France and England, an English frigate came within sight of the coast of France and made signals of distress in order to decoy out some vessel, and thereupon seized the boat and made prisoners of the sailors who generously went to its aid. If the report be true, the contemptible trick deserves severe punishment. It tends to prevent the giving of charitable assistance, so sacred a duty among men, and so commendable even between enemies. Besides, to make signals of distress is to ask for help, and thus impliedly to promise perfect safety to those who give it. Hence the act attributed to the frigate was a detestable breach of good faith.

History tell us of Nations, including the Romans themselves for a long period, which made profession of despising the use of any sort of deception, trick, or strata-

---

(*a*) Mémoires de Feuquieres, Tom. III, pp. 87 and foll.

gem in war; and also of others which went so far as to indicate the time and the place where they proposed to give battle.(*a*) Such conduct showed greater generosity than wisdom. It would doubtless be commendable enough if in war, as in the insane practice of dueling, there were no other question than to give proof of courage. But in war the object is to defend our country, to prosecute by force the rights which are unjustly refused us; and the surest means of doing so are also the most commendable, provided they are not in themselves unlawful or objectionable. *Dolus an virtus, quis in hoste requirat.* (*b*) The contempt for stratagems, tricks, and deception often proceeds, as in the case of Achilles, from a noble confidence in one's personal bravery and strength; and it must be confessed that when we can overcome an enemy by open force, in a pitched battle, we may flatter ourselves much more securely that we have conquered him and reduced him to the necessity of suing for peace than if we have won the victory over him by surprise. This was the view of those generous senators whom Livy reports as not approving of the insincere conduct observed towards Perseus.(*c*) When, therefore, simple courage in the open field can win the victory, there are times when it is preferable to stratagem, because the benefits it procures to the State are greater and more enduring.

§ 179. Spies.

The use of *spies* in time of war is a species of deceit or underhand dealing. Spies are persons who insinuate themselves with the enemy, in order to find out the condition of his army, study his plans, and then report this information to their master. They are ordinarily punished with death, and justly so, since there is scarcely any other means of protecting oneself from the harm they can do (§ 155). For this reason a man of honor, who does not want to run the risk of being put to death at the hands of a common executioner, refuses to act as a spy; moreover, he considers the office unworthy of him, since it generally involves some sort of treason. Hence the sovereign is not warranted in demanding such service of his subjects, except perhaps in some particular instance when the gravest interests are at stake. He therefore offers rewards, in order to induce persons of a mercenary spirit to undertake the work. If he employs only volunteers, or engages only persons who are not subjects of the enemy and are not bound to him by any tie, there is no doubt that he may lawfully and honorably profit by their services. But is it lawful, or honorable, to induce the subjects of the enemy to betray him by acting as spies in our service? We shall answer this question in the following section.

§ 180. Seduction of the enemy's subjects.

The general question is put whether it is lawful to seduce the enemy's subjects, in order to engage them to violate their duty by shameful treason. We must here distinguish between what is due to the enemy, notwithstanding the war, and what is demanded by the inner law of conscience and the rules of honorable conduct. We may take all possible means to weaken the enemy (§ 138), provided they be not injurious to the common welfare of human society, as are poisoning and assassination (§ 155). Now, in seducing a subject to act as a spy, or a governor to surrender his town, we do not attack the foundations of the common welfare and safety of mankind. The harm inflicted by subjects of the enemy, when acting as spies

---

(*a*) This was the custom of the ancient Gauls. See Livy. It is said of Achilles that he liked to fight only in the open, and that he was not the sort of man to shut himself up in the famous wooden horse which proved fatal to the Trojans.

> Ille non inclusus equo, Minervæ
> Sacra mentito, male feriatos
> Troas, et lætam Priami choreis
> Falleret aulam:
> Sed palam captis gravis . . .
>
> Horace, Lib. IV, od. VI.

(*b*) Vergil, Æneid, Lib. II, l. 390.

(*c*) Livy, Lib. XLII, Cap. XLVII.

against him is not of a vital and unavoidable character, since it may to a certain extent be guarded against; and as to the security of fortresses, it is the business of the sovereign to select carefully those whom he puts in charge of them. Hence such practices are not contrary to the external law of Nations with respect to war, and the enemy is not justified in complaining of them as shameful outrages. Accordingly they are made use of in all wars. But are they honorable, and consistent with the dictates of a good conscience? Assuredly not; and this is the feeling of the generals themselves, since they never boast of having resorted to them. To engage a subject to betray his country, to bribe a traitor to set fire to a magazine, to tempt the fidelity of a governor, to corrupt him and lead him to deliver up the town confided to him, is to induce those persons to commit abominable crimes. Is it honorable to corrupt one's worst enemy and tempt him to crime? At best, such practices could only be excused in a most just war, when it would be a question of saving one's country from the destruction threatening it at the hands of an unjust conqueror. Under such circumstances the subject or the general who should betray his prince would seem to be committing a less serious offense. One who respects neither himself, nor justice, nor honor, deserves to experience in his turn all the effects of baseness and perfidy; and if it ever be pardonable to depart from the strict rules of honor, it would be when acting against an enemy of this character and in a case of such urgent need. The Romans, who as a rule had such pure and noble conceptions of the laws of war, did not approve of these underhand practices. They did not look with favor upon the victory of the consul Servilius Cæpio over Viriatus, because it had been obtained by means of bribery. Valerius Maximus says that it was stained by a twofold perfidy;(*a*) and another historian writes that the Senate did not approve of it. (*b*)

§ 181. May the proffered services of a traitor be accepted.

It is another matter merely to accept the proferred services of a traitor. We have not seduced him, and we may profit by his crime, while detesting it. Turncoats and deserters commit a crime against their sovereign, yet they are taken in and harbored *by the law of war*, as the civil lawyers put it.(*c*) If a governor sells himself, and offers to deliver up his town for money, shall we scruple to take advantage of his crime, in order to obtain without danger what we have the right to take by force? But when we feel that we can succeed without the help of traitors, it is honorable to manifest our detestation of them by rejecting their offers. The Romans, in their heroic ages, in the times when they gave such noble examples of magnanimity and valor, always rejected with scorn the opportunity to profit by the treason of some subject of the enemy. Not only did they warn Pyrrhus of the shameful plan proposed by his physician, but they refused to take advantage of a less atrocious crime, and sent back, bound and fettered, to the Falisci, a traitor who had offered to deliver up the King's children.(*d*)

But when there are internal divisions in the enemy's State, the belligerent may without scruple maintain relations with one of the parties, and take advantage of their efforts to injure the opposite party in what they believe to be a good cause.

(*a*) Viriati etiam cædes duplicem perfidiæ accusationem recepit: in amicis, quod eorum manibus interemptus est; in Q. Servilio Cæpione consule, quia is sceleris hujus auctor, impunitate promissâ, fuit; victoriamque non meruit sed emit. (Lib. IX, Cap. VI, Num. 4.) Although this case seems to belong to another subject (that of assassination), I nevertheless quote it here, because it does not appear from other authors that Cæpio employed the soldiers of Viriatus to assassinate him. (See among others, Eutropius, Lib. IV, Cap. VIII.)

(*b*) Quæ victoria, quia empta erat, a senatu non probata. (Auct. de Viris Illust., Cap. LXXI.)

(*c*)Transfugam jure belli recipimus. (Digest. Lib. XLI, Tit. I; De adquir. rerum domin., Leg. LI.

(*d*) Eâdem fide indicatum Pyrrho regi medicum, vitæ ejus insidiantem: eâdem Faliscis vinctum traditum proditorem liberorum regis. (Livy, Lib. XLII, Cap. XLVII.)

He thus advances his own cause without seducing anyone, or participating in any way in another's crime. If he profits by their error, this is doubtless permissible against an enemy.

§ 182. Deceptive information.

By giving deceptive information a man pretends to betray his own party, in order to draw the enemy into a snare. If the act is done deliberately and of his own initiative, he is a traitor and his act is infamous. But an officer, or the governor of a town, if approached by the enemy, may, on certain occasions, lawfully feign to give ear to the proposal, in order to entrap the seducer, for the latter, by tempting his fidelity, insults him, and it is but just revenge if the officer lays a trap for him. In so doing the officer does not violate the faith of a promise, to the injury of mankind; for criminal agreements are absolutely void, and should never be fulfilled; and it would be well if the word of a traitor never could be relied upon and were at all times attended with incertitude and danger. For this reason, if a general learns that the enemy is tempting the fidelity of one of his officers or soldiers, he makes no scruple of ordering that subordinate to pretend to be gained over and to arrange his feigned treachery so as to draw the enemy into an ambuscade. The subordinate is obliged to obey. But when the commander in chief is himself approached by the enemy, a man of honor generally prefers, or should prefer, to reject with indignation and scorn so insulting a proposal.

CHAPTER XI.

The Sovereign Who Wages an Unjust War.

§ 183. An unjust war confers no rights.

All the rights of a belligerent are derived from the justice of his cause. The unjust Nation which attacks him, or threatens to attack him, or which withholds his property from him, which, in a word, does him an injury, puts him under the necessity of defending himself or of obtaining his rights by force and authorizes him in all the acts of hostility necessary to procure full satisfaction. Whoever takes up arms without a lawful cause has, therefore, no rights whatever; all the acts of hostility which he commits are unjust.

§ 184. Guilt of a sovereign who undertakes an unjust war.

He is answerable for all the evils and all the disasters of the war. The bloodshed, the desolation of families, the pillaging, the acts of violence, the devastation by fire and sword, are all his work and his crime. He is guilty towards the enemy, whom he attacks, oppresses, and massacres without cause; he is guilty towards his people, whom he leads into acts of injustice, whom he exposes to danger without necessity or reason—towards those of his subjects who are ruined or injured by the war, who lose their lives, their property, or their health because of it; finally, he is guilty towards all mankind, whose peace he disturbs and to whom he sets so pernicious an example. What a dreadful list of woes and crimes! What an account to render to the King of Kings, to the common Father of mankind! May this brief sketch give thought to the rulers of Nations, to princes and their ministers. Why may we not look for some fruit from it? Can those in high position have lost all sense of honor, of humanity, of duty, and of religion? And if our weak voice should in all the course of the ages prevent one single war, what more glorious reward could we desire for our studies and our labors.

§ 185. Obligations he is under.

He who does an injury is bound to repair it, or to give just satisfaction if the evil is irreparable; he is even bound to submit to punishment, if that be necessary as an example, or as an assurance to the injured party or to human society of his future good conduct. Such is the plight of a prince who carries on an unjust war. He must restore whatever he has taken, and send back at his own expense the prisoners; he must indemnify the enemy for the harm he has done and the losses he has caused; he must relieve families that have suffered, and repair, if possible, the loss of a father, a son, or a husband.

§ 186. Difficulty of repairing the evil he has done.

But how shall he repair so many evils? Many are of their nature irreparable. And as for those for which an equivalent may be offered in satisfaction, from what source will the unjust belligerent draw in order to compensate for his acts of violence? The private property of the prince would be insufficient for the purpose. Is he to give away that of his subjects? It does not belong to him. Shall he sacrifice the national domain, and make over a part of the State? But the State is not his patrimony (Book I, § 61), and he may not dispose of it at will. And although the nation is responsible, to a certain extent, for the acts of its ruler, still, apart from the fact that it would be unjust to punish the nation directly for offenses of which it is not guilty, this responsibility exists only towards other nations, which may look to it for redress (Book I, § 40; Book II, §§ 81, 82). Consequently the sovereign may not force it to bear the penalty of his unjust acts, nor despoil it in order to make amends for them; and even though he could, is he thereby cleansed of his guilt and cleared in conscience? Though exonerated by the enemy, would he be acquitted in the sight of his own people? It is a strange method of doing justice to repair, at the expense of some third person, the wrong done by oneself; it is merely changing the object of one's injustice. Weigh all these matters, ye rulers of Nations, and when you have come to see clearly that an unjust war leads you into endless misdeeds which it is beyond all your power to repair, perhaps you will be less ready to engage in one.

§187. Whether the nation and the soldiery are under any obligations.

The restoration of conquests, prisoners, and of property which can be given back in kind presents no difficulty when the injustice of the war is recognized. The Nation as a body, and the individual subjects, on recognizing the injustice of holding possession of property unlawfully acquired, should restore the property to its owners. But as regards repairing the damage that has been done, are the generals, officers, and soldiers bound in conscience to make good the wrongs which they have done, not of their own will, but as instruments in the hand of their sovereign? I am surprised that so rational a thinker as Grotius should decide without qualification in the affirmative.(*a*) His view is only tenable in the case of a war so clearly and unquestionably unjust as not to admit the supposition of any secret motive of state policy which might justify it—a case hardly possible where States are concerned. On all occasions open to doubt, the Nation as a body, the individual citizens, and above all the military, should submit their judgment to those who govern, to the sovereign; their duty to do so arises from the essential principles of political society and of government. What would authority amount to if, at every step taken by the sovereign, his subjects could weigh the justice of his motives? if they could refuse to march to a war which did not seem to them to be just? Indeed, it often happens that prudence will not allow the sovereign to make known his motives. It is the duty of subjects to presume that his motives are just and wise, so long as the evidence to the contrary is not clear and convincing. When, therefore, in this spirit of submission they have given their assistance to a war which afterwards proves to have been unjust, the sovereign alone is guilty, and he alone is under obligation to repair the wrong done. The subjects, and especially the military, are innocent; they have done no more than obey, as was their duty; and they are only called upon to give up what they have taken in such a war, since they hold it without lawful title. That, I believe, is the almost unanimous opinion of honest men and of officers of the highest honor and integrity. They are in the position of all those who have to carry out the sovereign's orders. Government would be impossible if every public official insisted upon examining and thoroughly understanding the justice of the commands given him before executing them. But if, for the good of the State, subjects must presume that the orders of the sovereign are just, they are not responsible for them.

(*a*) *De Jure Belli et Pacis*, Lib. III, Cap. x.

CHAPTER XII.

The Voluntary Law of Nations with Respect to the Effects of the Regular War, Independently of the Justice of the Cause.

§ 188. Nations may not enforce against one another the natural law in all its rigor.

The doctrines laid down in the preceding chapter are a logical inference from sound principles, from the eternal rules of justice; they are the provisions of that sacred law which Nature, or the Divine Author of Nature, has imposed upon Nations. He alone whose sword is drawn from necessity and in the cause of justice has the right to make war; he alone has the right to attack his enemy, to take away his life, and to deprive him of his property. Such is the decree of the *necessary Law of Nations*, or of the natural law, as it must be observed in all its strictness by Nations (Introd., § 7); it is the inviolable law binding upon each of them in conscience. But how shall this law be made to prevail in the quarrels of the Nations and sovereigns who live together in the state of nature? They recognize no superior who shall decide between them and define the rights and obligations of each, who shall say to this one, "You have a right to take up arms, to attack your enemy and subdue him by force," and to that other, "Your hostilities are unwarranted, your victories are but murder, your conquests are but the spoil of robbery and pillage." It belongs to every free and sovereign State to decide in its own conscience what its duties require of it, and what it may or may not do with justice (Introd., § 16). If others undertake to judge of its conduct, they encroach upon its liberty and infringe upon its most valuable rights (Introd., § 15). Moreover, since each Nation claims to have justice on its side, it will arrogate to itself all the rights of war and claim that its enemy has none, that his hostilities are but deeds of robbery, acts in violation of the Law of Nations, and deserving of punishment by all Nations. The decision of the rights at issue will not be advanced thereby, and the contest will become more cruel, more disastrous in its effects, and more difficult of termination. Further still, neutral Nations themselves will be drawn into the dispute and implicated in the quarrel. If an unjust war can give rise to no legal rights, no certain possession can be obtained of any property captured in war until a recognized judge, and there is none such between Nations, shall have passed definitely upon the justice of the war; and such property will always be subject to a claim for recovery, as in the case of goods stolen by robbers.

§ 189. Why they should admit the rules of the voluntary law of nations.

Let us, therefore, leave to the conscience of sovereigns the observance of the natural and necessary law in all its strictness; and indeed it is never lawful for them to depart from it. But as regards the external operation of that law in human society, we must necessarily have recourse to certain rules of more certain and easy application, and this in the interest of the safety and welfare of the great society of the human race. These rules are those of the *voluntary* Law of Nations (Introd., § 21). The natural law which looks to the greatest good of human society, which protects the liberty of each Nation, and which desires that the affairs of sovereigns be settled and their quarrels come to a speedy issue—the natural law, I say, recommends for the common advantage of Nations the observance of the voluntary Law of Nations, just as it approves of the changes which the civil law makes in the natural law for the purpose of adapting the latter to the conditions of civil society and of making its application easier and more certain. Let us, therefore, apply to the special subject of war the general statements which we made in the Introduction (§ 28). When a sovereign, or a Nation, is deliberating upon the steps he must take to fulfill his duty, he must never lose sight of the *necessary* law, which is always binding in conscience; but when it is a question of determining what he can demand of other States, he must consider the *voluntary* Law of Nations, and restrict even his just claims within the bounds of a law whose principles are consecrated to the safety and welfare of the universal society of Nations. Let him make the *necessary* law the constant rule of his own conduct; he must allow others to take advantage of the voluntary Law of Nations.

§ 190. As regards its effects, regular war must be accounted just on both sides.

The first rule of that law, with respect to the subject under consideration, is that *regular war, as regards its effects, must be accounted just on both sides.* This principle, as we have just shown, is absolutely necessary if any law or order is to be introduced into a method of redress as violent as that of war, if any bounds are to be set to the disasters it occasions, and if a door is to be left at all times open for the return of peace. Moreover, any other rule would be impracticable as between Nation and Nation, since they recognize no common judge.

Thus the rights founded upon the state of war, the legal nature of its effects, the validity of the acquisitions made in it, do not depend, externally and in the sight of men, upon the justice of the cause, but upon the legality of the means as such, that is to say, upon the presence of the elements constituting a regular war. If the enemy observes all the rules of formal warfare (see Chap. IV of this Book), we are not to be heard in complaint of him as a violator of the Law of Nations; he has the same right as we to assert a just cause; and our entire hope lies in victory or in a friendly settlement.

§ 191. Whatever is permitted to one is permitted to the other.

Second rule: Since two enemies are regarded as having an equally just cause, *whatever is permitted to one because of the state of war is also permitted to the other.* In fact, no Nation, on the ground of having justice on its side, ever complains of the hostilities of its enemy, so long as they remain within the bounds prescribed by the common laws of war. In the preceding chapters we have treated of what may lawfully be done in a just war. It is precisely that, and no more, which the voluntary law equally authorizes both parties in doing. That law makes the same acts lawful on both sides, but it allows neither party any act unlawful in itself, and can not approve of unbridled license. Consequently, if Nations overstep those limits, if they carry hostilities beyond what is in general permitted by the internal and necessary law for the support of a just cause, let us be careful not to ascribe these excesses to the voluntary Law of Nations; they are to be attributed solely to a moral degeneracy which has given rise to iniquitous and barbarous customs. Such are those excesses to which soldiers sometimes abandon themselves when a town is taken by assault.

§ 192. The voluntary law merely confers impunity upon him whose cause is unjust.

Thirdly, it must never be forgotten that *this voluntary Law of Nations*, established from necessity and for the avoidance of greater evils (§§ 188, 189), *does not confer upon him whose cause is unjust any true rights capable of justifying his conduct and appeasing his conscience, but merely makes his conduct legal in the sight of men, and exempts him from punishment.* This is sufficiently clear from the principles on which the voluntary Law of Nations is based. Consequently, the sovereign who has no just cause in authorization of his hostilities is not less unjust, or less guilty of violating the sacred Law of Nature, merely because that same natural law, in the effort not to increase the evils of human society while seeking to prevent them, requires that he be conceded the same legal rights as more justly belong to his enemy. Thus the civil law allows a debtor to refuse payment in a case of prescription; but the debtor nevertheless violates his moral duty; he takes advantage of a law enacted to prevent a multiplicity of lawsuits, but he acts without any true right.

From the fact that Nations actually concur in observing the rules which we assign to the voluntary Law of Nations, Grotius bases them upon a real consent upon the part of Nations, and refers them to the arbitrary Law of Nations. But apart from the difficulty of proving the existence of such an agreement, it would only be enforceable against those who had formally entered into it. If such an agreement existed, it would come under the conventional Law of Nations, which is a matter of historical proof, not of reasoning, and is based, not upon principles, but upon facts. In this work we are laying down the natural principles of the Law of Nations; we deduce them from nature itself; and what we call the voluntary Law of Nations consists in the rules of conduct, of external law, to which the natural law obliges Nations to consent; so that we rightly presume their consent, without seeking any record of it; for even if they had not given their consent, the Law of Nature supplies it, and gives it for them. Nations are not free in this matter to consent or not; the Nation which would refuse to consent would violate the common rights of all Nations. (See Introd., § 21.)

The voluntary Law of Nations, thus substantiated, is of very wide application; it is by no means a fantasy, an arbitrary invention destitute of foundation. It is derived from the same source and based upon the same principles as the *natural* or *necessary* law. Why has nature appointed to men such and such rules of conduct, except because those rules are necessary to the welfare and happiness of the human race? Now, the principles of the necessary Law of Nations are founded directly upon the nature of things, and particularly upon the nature of man and of political society, while the voluntary Law of Nations supposes a further principle, namely, the nature of the great society of Nations and of the intercourse which they have with one another. The necessary law prescribes what is of absolute necessity for Nations and what tends naturally to their advancement and their common happiness; the voluntary law tolerates what it is impossible to forbid without causing greater evils.

CHAPTER XIII.

Acquisition by War, and Conquest in Particular.

§ 193 How war is a mode of acquisition.

If it is lawful to take away the property of an enemy in order to weaken him (§ 160), and sometimes in order to punish him (§ 162), it is not less lawful in a just war to confiscate that property by way of *indemnification*, which is termed by the civil lawyers *expletio juris* (§ 161). The property is held as an equivalent for what is due from the enemy, for the expenses and losses he has occasioned, and even, when there is cause for punishing him, as a commutation for the punishment deserved. For when I can not obtain the actual thing which belongs to me, or is due to me, I have the right to an equivalent, which by the principles of *indemnificatory justice*, and from a moral point of view, is regarded as the thing itself. War in a just cause is therefore, according to the natural law, which constitutes the *necessary* Law of Nations, a lawful mode of acquiring title.

§ 194. Extent of the right it confers.

But that sacred law restricts within equitable bounds the acquisitions permitted in a just war; that is to say, it permits them no further than is necessary to give full satisfaction, to the extent required by the lawful purposes of acquisition above mentioned. A just conqueror, scorning the suggestions of ambition and avarice, will form a fair estimate of what is due him; that is, of the value of the object in dispute, if it can not be recovered in kind, and of the losses suffered and the expenses incurred in the war, and he will retain only so much of the enemy's property as is sufficient to form an equivalent. But if he is dealing with a perfidious, restless, and dangerous enemy, he will take from him, by way of punishment, certain of his towns and provinces, and will hold them as a barrier to protect his own territory. Nothing is more just than to weaken an enemy who has put himself in a position to be suspected and feared. The lawful purpose of punishment is to obtain security for the future. These, then, are the conditions which make acquisition by war just and blameless before God and our own conscience—that the cause be just and the satisfaction equitable in amount.

§ 195. Provisions of the voluntary law of nations.

But Nations can not insist upon such strict justice from one to another. By the *voluntary* Law of Nations, every regular war is accounted as regards its effects as just on both sides (§ 190), and no one has the right to judge a Nation as to the unfairness of its claims or as to the measures it deems necessary for its safety (Introd., § 21). Every acquisition made in a regular war is, therefore, according to the *voluntary* Law of Nations, valid, independently of the justice of the cause and of the motives the victor may have in claiming the right to hold what he has taken. Accordingly, conquest has been regularly looked upon by Nations as conferring lawful title, and such title has scarcely ever been questioned, except when originating in a war not only unjust, but destitute even of a semblance of justice.

§196. Acquisition of movable property.

The ownership of movable property vests in the enemy as soon as such property comes into his power; and if he sells it to neutral Nations the original owner can not assert a claim to it. But such property must be really in the power of the enemy and must have been taken to a place of safety. If a foreigner should come into our country and buy some portion of the booty just taken by a detachment of the enemy, our army, in pursuit of that detachment, would justly recapture the booty which that foreigner was too hasty in buying. On this point Grotius quotes from de Thou the instance of the town of Lierre in Brabant, which was captured and recaptured on the same day; the booty taken from the inhabitants was restored to them because it had not been twenty-four hours in the possession of the enemy.(*a*) This period of twenty-four hours, like the period observed in captures at sea,(*b*) has been established by the *conventional*, or by the customary Law of Nations, or even by the civil law in some States. The natural reason for the rule observed in favor of the inhabitants of Lierre is that the enemy was caught, so to say, in the act, and before he had carried off the booty, so that the booty was not regarded as having passed absolutely into the possession of the enemy and as lost to the inhabitants. Likewise at sea, a vessel captured by the enemy, so long as it has not been taken into a port or into the midst of a fleet, may be recaptured and delivered by other vessels of the same State. The fate of the vessel is not decided, nor the property rights in it irretrievably lost to the owner, until the captor has taken it to a place of safety and brought it completely within his power. But as far as affects its own citizens the laws of each State may provide otherwise,(*c*) either to prevent disputes or to encourage armed vessels to recapture merchant ships taken by the enemy.

The justice or injustice of the cause does not come into the question in this matter. There would be no stability of possession, and no security in trading with the belligerents, if it were permissible to distinguish between a just and an unjust war, so as to attribute legality to the effects of the one and deny it to those of the other. To do so would be to open the door to endless disputes and quarrels. This reason is of such force that it has caused the effects of public war to be attributed, at least with respect to movable property, to mere marauding expeditions which were carried on by regular armies. When, after the wars of the English in France, the *Grandes Compagnies* overran and pillaged Europe, no one thought of reclaiming the booty which they had carried off and sold. At the present day no one would be heard in assertion of a claim to a vessel captured by the Barbary corsairs and sold to a third party, or recaptured from them, although the depredations of those pirates can in no proper sense be regarded as regular warfare. We are speaking here of external law; the inner law of conscience doubtless obliges us to restore to a third party property which we have recaptured from an enemy who has despoiled him of it in an unjust war, provided he can prove the ownership of it, and pays the expenses which we have incurred in recovering it. Grotius(*d*) relates a great number of cases in which sovereigns and generals have generously restored such booty, without even requiring any compensation for their trouble or expense. But this is done only when the booty has been recently carried off. It would be impracticable to seek out the owners of property taken by the enemy a long time back; moreover, they have doubtless abandoned their claim to property which they had no hope of recovering. That is the ordinary attitude towards property lost in war; it is soon abandoned, as lost beyond hope of recovery.

§197. Acquisition of real property; conquests.

Real property—lands, towns, provinces—become the property of the enemy who takes possession of them; but it is only by the treaty of peace, or by the entire subjection and extinction of the State to which those towns and provinces belong, that the acquisition is completed and the ownership rendered permanent and absolute.

§ 198. When it may be validly transferred.

A third party can not, therefore, obtain secure possession of a conquered town or province until the sovereign from whom it has been taken has either renounced it by the treaty of peace or lost his sovereignty over it by final and absolute sub-

---

(*a*) *De Jure Belli et Pacis*, Lib. III, Cap. VI, § 3, not. 7.

(*b*) See Grotius, *ibid.*, and in the text.

(*c*) Grotius, *ibid.*

(*d*) Lib. III, Cap. XVI.

mission to the conqueror. For so long as the war is in progress and the sovereign has hope of recovering his possessions by force of arms, is a neutral prince to be allowed to deprive him of that chance, by purchasing the town or province from the conqueror? The former sovereign can not lose his rights by the act of a third party, and if the purchaser wishes to retain his acquisition he will find himself involved in the war. It was thus that the King of Prussia was numbered with the enemies of Sweden by receiving Stettin from the King of Poland and the Czar, under the title of confiscated property.(*a*) But as soon as a sovereign, by a definite treaty of peace, has ceded certain territory to a conqueror, he thereby abandons his title to it, and it would be absurd for him to claim the territory from a second conqueror who should take it from the first, or to claim it from any other prince who should acquire it by purchase, by exchange, or by any other title.

§ 199. Conditions upon which a conquered town is acquired.

The conqueror who takes from his enemy a town or province can justly acquire over it only those rights which the sovereign against whom he is fighting possesses. By the rights of war he may take possession of what belongs to his enemy; if he deprives him of the sovereignty of this town or that province, he acquires it such as it is, with all its limitations and qualifications of whatever character. Consequently, it is as a rule carefully stipulated, both in individual capitulations and in treaties of peace, that the towns and provinces ceded shall retain all their privileges, liberties, and immunities. And, in truth, why should the conqueror deprive them of their rights because of his quarrel with their sovereign? However, if the inhabitants have personally incurred the guilt of some crime against him, he may, by way of punishment, deprive them of their rights and privileges. He may likewise do so if they have taken up arms against him and thus become his direct enemies. In that case he owes them nothing more than is due from a just and humane conqueror to his enemies. Should he purely and simply unite and incorporate them into his former dominions they will have no cause of complaint.

Thus far I have been speaking, as is evident, of a town or a province which is not actually incorporated with a Nation, or which does not belong absolutely to the sovereign, but over which he or the Nation has merely certain rights. If the conquered town or province is under the full and absolute sovereignty of the Nation or prince, it passes to the conqueror on the same footing. Being thenceforth a part of the new State to which it belongs, if it loses by the transfer of sovereignty, it must submit to the misfortune as being the chance of war. Thus a town which, as a member of a republic or of a limited monarchy, had the right to send a deputy to the sovereign council or to the general assembly of the States, would be obliged to abandon rights of that nature if it were justly conquered by an absolute monarch. Such rights would be contrary to the new constitution to which it is subject.

§ 200. Lands of private citizens.

In former times even private citizens lost their lands by conquest; and it is not surprising that such a custom should have prevailed in the early ages of Rome. War was carried on by communities and by States under popular governments. The State as such possessed little property, and the quarrel was in reality the common cause of all the citizens. But at the present day war involves less terrible consequences for private persons; it is carried on in a more humane manner; a sovereign makes war upon another sovereign, and not upon unarmed subjects. The conqueror takes possession of the property of the State and leaves that of individuals untouched. The citizens suffer only indirectly by the war; conquest merely brings them a change of sovereigns.

(*a*) By the Treaty of Schwedt, Oct. 6, 1713.

§ 201. Conquest of the whole state.

But if the State as a whole is conquered, if the entire Nation is subjugated, what treatment must the conqueror accord it without overstepping the bounds of justice? What rights has he over the conquered territory? Some writers have dared to assert the monstrous principle that the conqueror is absolute master of his conquest, that he can dispose of it as his own property, and treat it as he pleases, according to the popular phrase, *to treat a State as conquered territory;* and thence they derive one of the justifications of *despotic* government. Let us disregard such persons who treat men as if they were chattels or beasts of burden, and who subject them to the ownership of another man, and let us argue the case on principles which are in accord with reason and humane sentiment.

A conqueror's whole right is derived from justifiable self-defense (§§ 3, 26, 28), which includes the assertion and enforcement of his rights. When, therefore, he has completely subjugated a hostile Nation, he may, without doubt, first of all do himself justice as regards the cause of the war, and indemnify himself for the expenses and the losses it has caused him; he may, if the case calls for it, impose penalties upon it by way of making an example; he may, if forced by motives of prudence, even disable it from hurting him so easily in the future. But in carrying out all these objects he should choose the least severe measures, and should remember that the natural law only allows him to injure his enemy precisely in so far as is necessary for his own just defense and reasonable protection for the future. Some princes are satisfied with imposing tribute upon the conquered Nation; others, with depriving it of certain rights, taking from it a province, or erecting fortresses as a check upon it; others, again, directing their revenge against the sovereign alone, have left the Nation in the full enjoyment of its rights and limited themselves to appointing another ruler.

But if the conqueror thinks it proper to retain the sovereignty of the conquered State, and if he is justified in doing so, the foregoing principles must also determine the manner in which he should treat that State. If his grievance is against the sovereign only, it follows from reason that he acquires by his conquest merely the rights which actually belonged to the dispossessed sovereign, and as soon as the people submit to him he should govern them according to the laws of the State. If the people do not submit willingly the state of war continues.

A prince who has taken up arms not only against the sovereign but against the Nation itself, and whose purpose it is to subdue a savage people and overcome once for all an obstinate enemy, may, if victor, justly impose burdens upon the conquered people in order to indemnify himself for the expenses of the war, and with the object of punishing them; he may, according to the extent of their perverseness, rule them with greater firmness so as to check their lawlessness; and he may, if necessary, hold them for a time in a kind of slavery. But this enforced condition should cease as soon as the danger is over and the conquered people have become citizens, for then the conqueror is no longer justified in his rigorous measures, since his protection and security no longer require such extraordinary precautions. He should finally adjust affairs in accordance with the principles of wise government and the duties of a good prince.

When a sovereign, claiming to be absolute master of the destinies of a conquered people, seeks to reduce them to a condition of slavery, he thereby continues the state of war between that people and himself. The Scythians said to Alexander the Great: "There is never any friendship between master and slave; even in time of peace the rights of war are still retained."(*a*) If it be said that peace

---

(*a*) Inter dominum et servum nulla amicitia est; etiam in pace belli tamen jura servantur. (Quintus Curtius, Lib. VII, Cap. VIII.)

can exist in such a case by a sort of contract, by which the conqueror spares the lives of the conquered on condition that they acknowledge themselves his slaves, the argument overlooks the fact that war confers no right to take away the life of an unarmed and subdued enemy (§ 140). But let us not contest the point; he who asserts such principles of law may properly be subjected to them. Men of spirit, who account life as nothing or less than nothing, if it is not accompanied with liberty, will think themselves forever at war with such a tyrant, although hostilities may be suspended on their part by reason of their inability to fight. Let us, therefore, assert further, that if a conquered State is to be truly subject to the conqueror, as to its lawful sovereign, he must govern it according to the ends for which civil government has been established. As a rule it is the prince alone who is the cause of the war, and, consequently, it is against him that the conquest is directed. It is enough that an innocent people should undergo the suffering occasioned by the war. Must even peace itself work to their destruction? A generous conqueror will endeavor to comfort his new subjects and alleviate their lot; he will consider it his bounden duty to do so. In the words of a great writer, "Conquest always leaves a great debt to be paid by the conqueror, if he is to clear himself of guilt in the eyes of the world."(*a*)

Fortunately, in this case, as in every other, good policy is in complete accord with humane treatment. What loyalty, or what support can you expect from an oppressed people? Do you wish your conquered territory to be a real addition to your strength, and its people to be devoted to you? Act towards it as a father, as a true sovereign. I admire the courageous answer of that ambassador from Privernum. When brought into the Senate he was thus addressed by the consul: "If we show mercy, what reliance can we place upon the peace you ask of us?" The ambassador replied: "If you grant us peace upon fair terms, it will be certain and perpetual; if upon unfair terms it will not last long." Certain senators took offense at this bold answer; but the more rational part of the Senate thought that the ambassador had spoken as became a brave and free man. "Can it be hoped," said those wise senators, "that any people, or any man, will continue to submit to a condition which is offensive to them when they are no longer under the necessity of doing so? Rely upon peace when it is given upon acceptable terms. What loyalty can you expect from those whom you seek to reduce to slavery?(*b*) The most secure sovereignty is that which is acceptable to those over whom it is exercised."(*c*)

Such are the rights which the natural law confers upon the conqueror and the duties which it imposes. The manner of enforcing his rights and fulfilling his duties will vary according to circumstances. In general, he should consult the true interests of his State, and with wise statesmanship should reconcile them as far as possible with the interests of the conquered State. He may, as the Kings of France have done, unite and incorporate it with his own dominions. Such was the practice of the Romans; but their method of doing so varied with the circumstances of the case. At a time when Rome had need of an increase of inhabitants, she destroyed

---

(*a*) Montesquieu, Esprit des Loix.

(*b*) Quid, si pœnan, inquit (Consul), remittimus vobis, qualem nos pacem vobiscum habituros speremus? Si bonam dederitis, inquit, et fidam, et perpetuam: si malam, haud diuturnam. Tum vero minari, nec id ambigue Privernatem quidam, et illis vocibus ad rebellandum incitari pacatos populos. Pars melior Senatus ad meliora responsa trahere, et dicere, viri et liberi vocem auditam: an credi posse ullum populum, aut hominem denique in ea conditione, cujus eum pœniteat diutius quam necesse sit mansurum? ibi pacem esse fidam, ubi voluntarii pacati sint: neque eo loco, ubi servitutem esse velint, fidem sperandam esse. (Livy, Lib. VIII, Cap. XXI.)

(*c*) Certe id firmissimum longe imperium est, quo obedientes gaudent. (Livy, Lib. VIII, Cap. XIII.)

the town of Alba, which she feared to have as a rival; but she received the inhabitants into her city and made citizens of them. Later on, the conquered cities were left standing, and Roman citizenship was conferred upon their inhabitants. Victory would not have benefited those peoples so much as did their defeat.

Furthermore, the conqueror may simply put himself upon the throne of the dispossessed sovereign. Such was the action of the Tartars in China: the Empire continued in its former condition, except that a new race of sovereigns ruled over it.

Finally, the conqueror may govern the conquered territory as a separate State, without changing the form of government. But this method is dangerous; it does not produce a real union of forces, and it weakens the conquered territory without strengthening to any extent the conquered State.

§ 202. To whom the conquered territory belongs.

It is asked, to whom does the conquered territory belong—to the prince who has won it or to his State? The question has no point to it at all. Can the sovereign act, in his capacity as sovereign, for any other end than the welfare of the State? Whose are the forces which he makes use of in his wars? Although he should make the conquest at his own expense, and pay for the war out of his own treasury and the revenues of his own hereditary estates, does he not make use of the physical strength of his subjects, and does he not shed their blood? But even granted that his army were to consist of foreign mercenaries, does he not expose his Nation to the revenge of the enemy, does he not involve it in the war? and is he alone to reap the fruit of victory? Is it not in the cause of the State, of the Nation, that he goes to war? To the Nation, therefore, belong whatever rights arise from it.

Another question is presented if the sovereign goes to war in a cause which is personal to him; for instance, in order to enforce a right of succession to the throne of a foreign country. This is an affair in which the State is not concerned; but then the Nation should be at liberty either to interfere and assist its prince, or not to do so, as it pleases. But if the prince has the power to draw upon the forces of the Nation for the support of his personal rights, he can no longer distinguish his own rights from those of the State. The law of France, which unites to the Crown whatever territory is acquired by the French Kings, should be the law of all other Nations.

§ 203. Whether we should set at liberty a nation which has been unjustly conquered by our enemy.

We have seen (§ 196) under what circumstances we may be obliged, not by any external law, but by the inner law of conscience and equity, to restore to a third party booty which was taken from him in an unjust war, and which has been recaptured by us. The obligation is more certain and comprehensive where a Nation has been unjustly oppressed by our enemy, for a Nation thus deprived of its liberty never abandons the hope of recovering it. If it was incorporated into the conquering State against its will, if it did not freely aid that State in the war against us, we should certainly make use of our victory so as not merely to change its ruler, but to break its chains. It is a noble fruit of victory to deliver an oppressed people; and it is a great gain thus to win a faithful friend. The canton of Schweitz, after having delivered Glarus from the House of Austria, gave back to the inhabitants their former liberty, whereupon Glarus was received into the Swiss Confederation and formed the sixth canton.(*a*)

(*a*) De Watteville, Histoire de la Confédération Helvétique, Liv. III, under the year 1351.

CHAPTER XIV.

The Rule of Postliminium.

§ 204. Definition of the rule of postliminium.

The rule of *postliminium* is that by which the persons and property captured by the enemy are restored to their former status on coming again into the power of the Nation to which they belong.

§ 205. Basis of this rule.

The sovereign is under obligation to protect the persons and the property of his subjects and to defend them against the enemy. When, therefore, a subject, or some part of the subject's property, has fallen into the hands of the enemy, if by some happy turn of events they come into the power of the sovereign, there is no doubt but that he should restore them to their former condition by renewing in the subject all his rights and obligations, and by returning the property to its owners; in brief, by putting things as they were before the enemy became master of them.

The justice or injustice of the war does not enter into the case, not only because, in accordance with the voluntary Law of Nations, the war, as to its effects, is regarded as just on both sides, but also because the war, whether just or not, is fought in the Nation's cause. Consequently, if the subjects who fight or who suffer for the Nation should fall into the hands of the enemy, and afterwards, by some fortunate chance, should be recovered by their Nation, there is no reason why they should not be restored to their former condition and be as if they had never been captured; and the same rule holds for their property. If the war is just, then they were unjustly captured, and nothing is more natural than to reinstate them in their rights as soon as that is possible; if the war is unjust they are under no greater obligations to endure the sufferings of it than the rest of the Nation. Their capture was their misfortune; their deliverance is their blessing; and here again the result is as if they had never been captured. Neither their sovereign nor the enemy has any special right over them; the enemy has lost by one chance what he had gained by another.

§ 206. How it operates.

By the rule of *postliminium*, therefore, persons are restored to their rights, and property to its owners, when, after having been captured by the enemy, they or it come again into the hands of their Nation (§204). Consequently the rule takes effect as soon as such persons or property captured by the enemy are retaken by the soldiers of the same Nation, or find their way back to the army, the camp, the territories of their sovereign, or the places under his control.

§207. Whether it takes effect among allies.

Those who unite with us to carry on the war make common cause with us, so that their rights are the same as our rights, and they are regarded as making but one body with us. When, therefore, the persons or the property captured by the enemy are retaken by our allies or auxiliaries, or in any other way fall into their hands, the result is precisely the same, with respect to the legal effect, as if such persons or property should come directly into our possession, since where the cause is common what is held by them is held by us. The rule of *postliminium*, therefore, takes effect among those who carry on the war with us; so that the persons and the property which they recapture from the enemy should be restored to their former condition.

But does this rule take effect in the territory of our allies? A distinction must be made. If those allies make common cause with us, if they are leagued with us in the war, the rule of *postliminium* operates in our favor in their territories as in our own. For their State is united to ours and constitutes but one body with us in the war. But if, as is a frequent practice at the present day, an ally limits himself to furnishing us the help stipulated for in treaties, without personally coming to a break with our enemy, so that their two States continue at peace in their immediate relations, in that case the auxiliary troops which he sends us are alone partakers and associates in the war, while his dominions remain neutral.

§ 208. It does not take effect in the case of neutral nations.

Now, the rule of *postliminium* does not take effect in the case of neutral Nations, for if a Nation wishes to remain neutral in a war, it is obliged to consider the war, with respect to its effects, as equally just on both sides, and consequently it must regard as lawful prize whatever has been captured by either party. To grant to one belligerent the right to reclaim, in the neutral territory, property captured by the other, that is, to enforce the rule of *postliminium*, would be to declare in favor of the former and to cease to be neutral.

§ 209. What property may be recovered by the rule of postliminium.

Property of every character is naturally recoverable by the rule of *postliminium;* and provided it be recognizable with certainty there is no intrinsic reason for excepting personal property from the rule. Accordingly we find that the ancients frequently restored such property, when recaptured from the enemy, to its former owners.(*a*) But the difficulty of identifying personal property, and the countless disputes which would arise from the attempt to reclaim it, have created a general custom to the contrary. Furthermore, the small chance of the recovery of such property when once captured by the enemy and taken to a place of safety, raises the reasonable presumption that it has been abandoned by its original owners. Hence it is with good reason that personal property, or booty, is excepted from the rule of *postliminium*, unless it is recaptured immediately after it has been taken by the enemy, in which case there is neither difficulty in identifying it nor a presumption of abandonment by the owner. Now, once this practice has become the accepted and well-established custom, it would be wrong to go contrary to it (Introd., § 26). It is true that with the Romans slaves were not treated like other personal property; they were returned to their owners by the rule of *postliminium*, even when other booty was not so restored. The reason for this is clear. As it is always easy to identify a slave and to find out to whom he belongs, the owner has always the hope of recovering him, and therefore is not presumed to have abandoned his right.

§ 210. Persons whose return the rule of postliminium does not affect.

Prisoners of war who have given their parole, the inhabitants of provinces and towns who have submitted to the enemy and have promised or sworn fidelity to him, can not of their own act return to their former condition by the rule of *postliminium*, for good faith must be kept, even with enemies (§ 174).

§ 211. They benefit by that rule when they are recaptured.

But if the sovereign recaptures these towns, provinces, or bodies of prisoners, he recovers all the rights which he had over them, and should restore them to their former condition (§ 205). They then benefit by the rule of *postliminium*, without violating their parole or being wanting in good faith. The enemy loses by arms the right which he had acquired by arms. But with regard to prisoners of war a distinction is to be made. If on giving their parole they were set entirely at liberty, they are not released by the mere fact that they fall into the hands of their Nation, since they could even have returned to their homes without ceasing to be prisoners; consequently they can only be released by the consent of their captor or by his complete subjugation. But if they have only promised not to escape, a promise

---

(*a*) See several cases mentioned by Grotius, Lib. III, Cap. XVI, § 2.

which is often made in order to avoid the hardships of prison life, they are only under obligation not to leave by their own act the territory of the enemy, or the town which has been assigned them as their place of residence; and if the army of their State should get possession of the place where they reside, they are set at liberty and restored to their Nation and to their former condition by the right of arms.

§212. Whether the rule extends to property which has been alienated by the enemy.

When a town which has been captured by the enemy is retaken by its own sovereign, it is restored, as we have just seen, to its former condition, and consequently reinstated in all its rights. The question arises whether the town thereby recovers such of its property as has been alienated by the enemy when he was master of it. We must first distinguish between personal property, which is not restored by the rule of *postliminium* (§ 202), and real property. The former belongs to the enemy when he takes possession of it, and may be alienated by him beyond possibility of recovery. As to real property, it must be remembered that the acquisition of a conquered town is only consummated by the treaty of peace, or by the entire subjugation or destruction of the State to which it belongs (§ 197). Up to that point there still remains for the sovereign of the town the hope of recapturing it, or recovering it by the treaty of peace; and the moment that it comes again into his power he restores it to all its rights (§ 205); consequently it recovers all its property as far as the property is of its nature recoverable. It will therefore reclaim its real property from those who were too eager to acquire it; they took a risk in purchasing it from one whose title to it was imperfect, and if they lose thereby it is a loss to which they deliberately exposed themselves. But if that town has been ceded to the enemy by a treaty of peace or if it has fallen completely into the power of the enemy by the entire subjugation of the State, then the rule of *postliminium* no longer operates in its favor, and the alienation of its property by the conqueror is valid and irrevocable. The town can not reclaim that property if by a successful revolution it is afterwards delivered from the yoke of the conqueror. When Alexander made a present to the Thessalians of a debt which they owed the Thebans (see above, § 77), he was absolute master of the Theban Republic, whose city he destroyed and whose inhabitants he sold into slavery.

The same practice is observed where the real property of individuals, prisoners or not, has been alienated by the enemy while he was master of the country. Grotius raises the question(*a*) with respect to real property held in a neutral country by a prisoner of war. But according to our argument the question has no point to it; for the sovereign who makes a prisoner in war has no further right over him than that of holding him until the end of the war, or until ransom is given (§§ 148 and foll.), and he acquires no right over the prisoner's property, except in so far as he can get possession of it. It is impossible to find any reason in the natural law why a captor should be allowed to dispose of his prisoner's property when the prisoner has not the property about him.

§213. Whether the rule of postliminium operates in favor of a nation which has been completely subdued.

The question is raised whether, when a Nation, a people, a State has been completely subjugated, a revolution can entitle them to benefit by the rule of *postliminium?* Here again a distinction must be made if the question is to be properly answered. If the subjugated State has not yet accepted its new condition of subjection, if it has not voluntarily submitted, and has merely ceased to resist from lack of power, if its conqueror has not put aside his sword in exchange for the sceptre of a just and peaceful ruler, such a State is not really subdued; it is merely conquered and oppressed, and when delivered by the army of an ally, it unques-

---

(*a*) Lib. III., Cap. IX, § 6.

tionably returns to its former condition (§ 207). Its ally does not become its conqueror; he is a liberator, whom the State is merely under the obligation of recompensing. But if the subsequent conqueror is not an ally of the State, and attempts to keep it subject to him as the reward of his victory, he puts himself in the position of the former conqueror and becomes the enemy of the State which he oppresses; and that State may lawfully resist him and take advantage of a favorable opportunity to recover its liberty. If the State has been unjustly oppressed, he who delivers it from the yoke of the oppressor should generously reinstate it in the possession of all its rights (§ 203).

A different case is presented when a State has voluntarily submitted to the conqueror. If a people have submitted to a lawful government, so that they are treated no longer as enemies but as true subjects, they thenceforth are dependent upon a new sovereign and are incorporated into the conquering State; they are part of it and follow its destiny. Their former national existence is entirely destroyed, and all the foreign relations and alliances of their State come to an end (Book II, § 203). Whoever, therefore, the new conqueror may be who afterwards subjugates the State to which they are united, they undergo the fate of that State, as the part follows the lot of the whole. This has been the practice of Nations in all ages—I mean, even of just and equitable Nations, especially when the earlier conquest was made a long time before the later one. The more self-restrained conquerors limit themselves to restoring its liberty to a Nation which has been recently subjugated and which they do not consider to be as yet perfectly incorporated into or in sympathy with the State which conquered it.

If that Nation throws off the yoke itself and sets itself at liberty, it re-enters into the enjoyment of all its rights and regains its former position; and it is not for other Nations to decide whether it has released itself from a lawful authority or has broken its chains. Thus the Kingdom of Portugal, which had been invaded by Philip II of Spain, under pretense of an hereditary right, but in reality because he had a powerful army at his command, restored the independence of its crown, and re-entered upon its former rights when it drove out the Spaniards and put the Duke of Braganza on the throne.

§ 214. The rule of postliminium with respect to what is restored by the treaty of peace.

The provinces, towns, and territory which the enemy restores by the treaty of peace benefit without question by the rule of *postliminium*. For the sovereign must reinstate them in their former position as soon as they come again within his power (§ 205), no matter in what manner he recovers them. When by the treaty of peace the enemy restores a town, he renounces the right which he had acquired by arms, and the result is as if he had never taken the town. There is no reason by which the sovereign can justify himself in not reinstating it in the rights which it formerly enjoyed.

§ 215. With respect to what is ceded to the enemy.

But whatever territory is ceded to the enemy by the treaty of peace is truly and fully alienated. The rule of *postliminium* no longer applies to it, unless the treaty of peace be broken or annulled.

§ 216. Rule of postliminium does not apply after treaty of peace.

And as property not mentioned in the treaty of peace remains in the condition it was in at the time the peace was made, and is on both sides tacitly ceded to him who holds it at the time, it may be stated in general that the rule of *postliminium* does not apply after peace is concluded. It wholly pertains to the state of war.

§ 217. Why it always applies in the case of prisoners.

For that very reason, however, an exception is to be made here in favor of prisoners of war. Their sovereign must obtain their release by the treaty of peace (§ 154). If he can not do so, if the fate of war forces him to accept hard and unjust terms, it remains for the enemy to release those prisoners when the war is over, and there is nothing more to be feared from them (§§ 150, 153). If the enemy keeps them in captivity, and especially if he reduces them to slavery, he continues with them the state of war (§ 152). They are therefore justified in escaping from his hands if they have the opportunity, and in returning to their country, just as they might do in time of war, since, as far as they are concerned, war is still going on. Should they escape, their sovereign, who owes them protection, is bound to restore them to their former status (§ 205).

§ 218. They are likewise free if they escape into neutral territory.

Moreover, those prisoners who are held captive without lawful reason after the treaty of peace are free if on escaping from prison they reach a neutral country; for enemies can not be pursued and seized in neutral territory (§ 132); and he who holds an innocent prisoner captive after the treaty of peace continues to be at war with him. This rule should be, and actually is, enforced between Nations which neither practise nor authorize the enslavement of prisoners of war.

§ 219. How the rights and obligations of prisoners continue.

It is sufficiently clear, from what we have just said, that prisoners of war should be regarded as citizens who may one day return to their country; and that when they return their sovereign is bound to restore them to their former status. From this it clearly follows that the rights of these prisoners, and the obligations they are under, or the rights of others over them, continue in their entirety, and merely remain for the most part suspended as to their exercise during the time of captivity.

§ 220. Will of a prisoner of war.

Consequently a prisoner of war retains the right to dispose of his property, and particularly the right to dispose of it by will; and as there is nothing in his condition of captivity which can prevent the exercise of his right in the latter respect, the will of a prisoner of war should be valid in his own country, if not rendered void by any inherent defect.

§ 221. Marriage.

With Nations which have made the marriage bond indissoluble, or permanent for life unless dissolved by a court of justice, the bond still endures in spite of the captivity of one of the parties; and the prisoner on his return home re-enters, by the rule of *postliminium*, into all his matrimonial rights.

§ 222. Modifications of the rule of postliminium, introduced by treaty or by custom.

We shall not enter into details here of the ordinances enacted by the civil laws of some States with respect to the rule of *postliminium*. Let us merely observe that these special regulations are only binding upon the subjects of the State itself, and do not affect foreigners. Nor shall we touch upon treaty stipulations; these private agreements establish a conventional rule which affects only the contracting parties. Customs introduced by long and regular usage bind the Nations which have given their tacit consent to them, and should be respected when they contain nothing contrary to the natural law. But such customs as are in violation of that sacred law are inherently bad and without force. Far from conforming to such customs, every Nation is bound to endeavor to have them abolished. Among the Romans the rule of *postliminium* was in force, even in time of peace, with respect to Nations with which Rome had bonds neither of friendship, nor of hospitality, nor of alliance.(*a*) This was because those Nations, as we have already remarked, were in a manner regarded as enemies. But with the advance of civilization that relic of barbarous ages has been almost everywhere abolished.

(*a*) Digest. Lib. XLIX; *De Capt. et Postlim.* Leg. V, § 2.

CHAPTER XV.

The Law of War with Respect to Private Persons.

§ 223. Subjects may not commit acts of hostility without the order of the sovereign.

The right to make war, as we have pointed out in the first chapter of this Book, belongs solely to the sovereign power. Not only is it for the sovereign to decide whether it is proper to go to war, and to declare it, but it is his duty also to direct all the operations of the war as a matter of the utmost importance to the welfare of the State. Accordingly, the subjects may not act in this case on their own account, and they may not commit any acts of hostility without the order of the sovereign. Be it understood, however, that self-defense is not included here in acts of hostility. If a subject may properly resist the attack of a fellow-citizen when the protection of the police force is lacking, with much greater reason may he defend himself against the unexpected attack of foreigners.

§ 224. The order may be general or special.

The order of the sovereign, which commands acts of hostility and authorizes the perpetration of them, is either general or special. The declaration of war, which commands all the subjects *to attack the subjects of the enemy*, imports a general order. The generals, officers, soldiers, captains of privateers, and partisans, who have commissions from the sovereign, carry on war by virtue of a special order.

§ 225. Why such an order is necessary.

But if the subjects have need of an order from the sovereign to authorize them to make war, this necessity is solely due to the essential laws of every political society, and does not result from any obligation towards the enemy, for from the moment a Nation takes up arms against another, it declares itself the enemy of all the individual citizens of the latter and justifies them in treating it in turn as such. What right would it have to complain of acts of hostility which private citizens might commit against it without orders from their sovereign? Hence the rule of which we are speaking relates to public law in general rather than to the Law of Nations strictly so called—to the principles determining the mutual obligations of Nations.

§ 226. Why the law of nations has been obliged to adopt this rule.

According to the Law of Nations taken by itself, as soon as two Nations are at war all the subjects of the one may commit acts of hostility against the other, and may injure it in every way authorized by the state of war. But if two Nations were to come together thus with all their forces, war would become much more cruel and more destructive, and it could scarcely terminate otherwise than by the complete destruction of one of the parties, as the wars of ancient times only too well prove. We may recall the early wars of Rome against the democratic States of the surrounding territory. It is therefore with good reason that the contrary practice has become the custom of European Nations, at least of those which maintain regular armies or standing bodies of militia. The troops alone carry on the war and the rest of the people remain at peace. The necessity of a special order is so well established that, even after a declaration of war between two Nations, if the peasantry commit of their own accord any acts of hostility, the enemy treats them without mercy, and hangs them as he would robbers or brigands. The same rule applies to those who engage in privateering at sea. A commission from their prince, or from the admiral, can alone insure them that, if taken, they will be treated as prisoners captured in regular warfare.

§ 227. How the general order *to attack* is interpreted.

It is true that declarations of war still contain the ancient formula which commands all the subjects not only to break off all intercourse with the enemy, but also *to attack* him. Custom interprets this general order. It authorizes, indeed it even obliges, all the subjects of whatever rank to seize the persons and property of the enemy when they or it fall into their hands; but it does not call upon them to commit any offensive act without a commission or special order.

§ 228. What private persons may do on the authority of the implied command of the sovereign.

However, there are occasions when the subjects may reasonably take for granted the sovereign's orders and act on the authority of his implied command. Thus, in spite of the custom which generally limits the operations of war to the army, if the citizens of a fortified town which has been captured by the enemy have not promised or sworn submission to him, and should find a favorable opportunity to surprise the garrison and win back the town for their sovereign, they may confidently presume that the prince will approve of their courageous undertaking. And who will presume to condemn it? It is true that if the citizens fail in their attempt the enemy will treat them with great severity; but that does not prove that the attempt is unjustifiable or contrary to the laws of war. The enemy does but make use of his right, the right of arms, which warrants him in employing, to a certain extent, terror as a means of preventing the subjects of the sovereign with whom he is at war from too readily hazarding such bold attempts, the success of which would be fatal to him. We have seen how in the late war the inhabitants of Genoa suddenly took up arms of their own accord and drove the Austrians from the town. The Republic celebrates annually the memory of an event by which its liberty was recovered.

§ 229. Privateering.

Persons who equip at their own expense vessels to engage in privateering receive a commission from the sovereign, which entitles them to the ownership of the booty which they capture, as a return for the outlay they make and the risk they undergo. The sovereign allows them either the whole or a part of the booty, depending upon the nature of the contract which he makes with them.

Since the subjects are not bound to weigh scrupulously the justice of the war, which they are not always in a position thoroughly to investigate, and as to which, in a case of doubt, they should refer to the judgment of the sovereign (§ 187), there is no doubt that they may with a clear conscience serve their country by fitting out privateers, unless the war be clearly unjust. But, on the other hand, it is a shameful practice for foreigners to take out commissions from a prince in order to prey upon the vessels of a Nation which is absolutely innocent in their regard. The thirst for gain is their sole motive, and the commission which they receive, while securing impunity for them, can not remove the stain of infamy. Those only are excusable who assist in this way a Nation whose cause is unquestionably just, and which has taken up arms only to protect itself from oppression; their act would be even praiseworthy if, out of hatred of oppression and from love of justice rather than desire of gain, they were impelled to the generous act of exposing their lives or their fortunes to the chance of war.

§ 230. Volunteers.

The laudable object of instructing oneself in the art of war, and of thus rendering oneself more capable of serving one's country, has given rise to the practice of serving as a volunteer even in foreign armies; and the practice is doubtless justified by so commendable a motive. At the present day volunteers are, when captured, treated by the enemy as if they formed part of the army in which they are fighting. It is entirely reasonable that they should be so treated; for they are in fact part of that army, and they support the same cause; and it matters little whether they do so from obligation or of their own free will.

§ 231. What soldiers and subordinate officers may do.

Soldiers can undertake nothing without the express or implied command of their officers; for their duty is to obey and to execute orders, and not to act on their own account; they are but instruments in the hands of their commanders. It will be recalled here what we mean by an implied order, namely, one which is necessarily included in an express order, or in the duties assigned by a superior. What we say of soldiers should be understood in a proper degree of officers and of all those in subordinate positions of command. Both soldiers and officers are, with respect to matters not committed to their care, in the position of private citizens, who can not attack the enemy unless commanded to do so. The prohibition is even more strict in their case; for the military law expressly forbids them to act without orders, which, owing to the necessity of strict discipline, can scarcely ever be presumed. In war, an attack, which may seem very advantageous and almost certain of success, may have disastrous consequences; it would be dangerous to leave it to the judgment of subordinate officers, who are not acquainted with all the plans of the general, and who have not his knowledge of the situation; hence it is not to be presumed that he meant to let them act at their own discretion. To fight without orders is almost always, in the case of a soldier, to fight contrary to express orders. Accordingly there is hardly any other case than that of self-defense when a soldier or subordinate officer may act without orders. In that case orders may safely be presumed; or rather the right to defend oneself from attack belongs naturally to every man, and no permission is needed. During the siege of Prague in the late war, a party of French grenadiers, without orders and without officers, made a sally, took possession of a battery, spiked some of the guns, and brought away the rest into the town. Had they been treated with the severity shown by Roman generals they would have been put to death. There is the well-known case of the consul Manlius,(*a*) who put to death his own son, who, although victorious, had fought without orders. But owing to the difference of times and manners, generals are obliged to moderate that severity. Marshal Belle-Isle publicly reprimanded his brave grenadiers; but he secretly sent them money as a reward for their courage and devotion. During another famous siege of the same war, that of Coni, the soldiers of some battalions stationed in the trenches made on their own account, in the absence of their officers, a vigorous sortie which proved successful. Baron de Leutrum was forced to pardon the offense in order not to discourage the bravery on which the safety of the town entirely depended. However, such unregulated ardor must as far as possible be held in check, as it may prove disastrous. Avidius Cassius punished with death certain officers of his army who, with a handful of men, but not acting under orders, surprised a body of three thousand men and cut them to pieces. He justified his severity on the ground *that the party might have fallen into an ambush* (*dicens, evenire potuisse ut essent insidiæ* . . .) (*b*)

§232. Whether the state should indemnify subjects for the losses caused by the war.

Should the State indemnify individuals for the losses occasioned by the war? We see from Grotius(*c*) that authors are divided on the question. Two classes of losses must be here distinguished—those caused by the State or by the sovereign himself, and those caused by the enemy. Of the first class some are caused deliberately and by way of precaution, as when the field, garden, or house of an individual is taken in order to build upon the spot the rampart of a town, or some other part of the fortifications, or when his crops or storehouses are destroyed lest they should be of service to the enemy. The individual should be indemnified by the State for losses of this kind, since it is not just that he should bear more than his proportionate share of them. But other losses are the result of unavoidable necessity, as, for example, the destruction caused by the artillery in a town when it is retaken from the enemy. Such losses are accidents; they are the misfortunes of war for

---

(*a*) Livy, Lib. VIII, Cap. VII.

(*b*) Vulcatius Gallicanus, quoted by Grotius, Lib. III, Cap. XVIII, § 1, not. 6.

(*c*) Lib. III, Cap. XX, § 8.

the owners upon whom they fall. The sovereign should endeavor to make equitable compensation for them, as far as the state of his finances will permit; but the losers can not bring suit against the State for injuries of this kind, for losses which the State has not caused deliberately, but by chance, in the necessary exercise of its rights. The same is to be said of losses caused by the enemy. All the citizens are exposed to such losses, and it is his misfortune upon whom they fall. If in civil society we must risk our lives for the State, we may well risk our property. If the State were obliged to make full compensation for all such losses, the public treasury would soon be exhausted; each individual would be obliged to contribute, in just proportion to the amount of his property, to the general fund—a thing entirely impracticable. Moreover, the process of making compensation would be liable to a thousand abuses and would develop into endless ramifications, so that it can be presumed that it was not the intention of those who united in civil society to attempt such a task.

But it is entirely in accord with the duties of the State and of the sovereign, and consequently perfectly fair, and even just, to relieve as far as possible those unfortunate persons whose property has been destroyed by the war; as also to care for a family whose head and support has lost his life in the service of the State. For him who recognizes his duties there are many debts which are still sacred, though unenforceable in a court of law.

CHAPTER XVI.

Various Conventions Made During the Course of the War.

§ 233. Truces and suspensions of hostilities.

War would become too cruel and too destructive if all intercourse with the enemy were absolutely broken off. As Grotius remarks,(*a*) there still continues the *intercourse of war*, as Vergil(*b*) and Tacitus(*c*) term it. The events and contingencies of the war force the belligerents to enter into various conventions. As we have already treated the general subject of the observance of good faith between enemies, we need not prove here the obligation of faithfully carrying out the conventions made during the war; we have only to explain the nature of those agreements. An agreement is sometimes made to discontinue hostilities for a certain time; if the agreement is only for a very short period, and affects only a particular place, it is called a *cessation* or *suspension of hostilities*. Such are the conventions made for the burial of the dead after an assault or a battle, and for a parley or conference between the belligerent generals. If the agreement is for a longer period, and especially if it includes the whole area of hostilities, it is called more specifically a *truce*. By many persons the two terms are used indifferently.

§ 234. They do not end the war.

A *truce* or *suspension of hostilities* does not terminate the war; it merely suspends its operations.

§ 235. Truces are either partial or general.

A truce is either partial or general. By the former hostilities cease merely in certain places, as between a town and the army besieging it; by the latter hostilities cease throughout the whole area of the war. Partial truces may relate either to the character of hostilities in general or to definite parties between whom operations are suspended; that is to say, an agreement may be made to abstain for a time from certain acts of hostility, or two divisions of the army may conclude a truce without respect to place.

§ 236. General truces for long periods.

When a general truce is made to cover many years, it scarcely differs from a treaty of peace, except that it leaves undecided the dispute which gave rise to the war. When two Nations are weary of fighting, and yet can not arrive at a settlement upon the question at issue, they have recourse to an agreement of this character. It is thus that between the Christians and the Turks, instead of treaties of peace, truces for long periods are generally made. This is due sometimes to a false spirit of religion and at other times to the fact that neither side is willing to recognize the other as lawful master of their respective possessions.

§ 237. By whom these agreements may be entered into.

In order that an agreement may be valid, the contracting parties must be competent to act in the case. Whatever acts are done in time of war are done under the authority of the sovereign, who alone has the right to undertake the war and to direct its operations (§ 4). But as it is impossible for him to fulfill all the duties of his office unaided, he must necessarily delegate a part of his power to his ministers and officers. The question then arises to determine what functions the sovereign reserves for his personal performance, and what functions it is to be naturally presumed he has confided to his appointed ministers, to the generals and to other army officers. We have laid down and developed in an earlier chapter

---

(*a*) Lib. III, Cap. XXI, § 1.
(*b*) . . . . Belli commercia Turnus Sustulit ista prior . . . . (Æneid, X, 532).
(*c*) Annales, Lib. XIV, Cap. XXXIII.

(Book II, § 207) the principle which must serve here as a general rule. If the officer who commands in the sovereign's name is not acting under special orders, he is regarded as invested with all the powers necessary to the proper and reasonable exercise of the functions which naturally belong to his office. All other powers are reserved to the sovereign, who is presumed to have delegated his powers no further than was necessary for the good of his affairs. Following this rule, a general truce may be concluded only by the sovereign himself, or by one to whom he has expressly delegated the power, for the successful conduct of the war does not require that a general be invested with such extensive authority; it would exceed the limits of his functions, which consist in directing the operations of the war in the place where he commands, and not in regulating the general interests of the State. The conclusion of a general truce is a matter of such importance that the sovereign is always presumed to have reserved it to himself. So extensive a power befits only the governor or viceroy of a distant country with regard to the territory under his control; moreover, if the truce is for many years, it is natural to presume that it must be ratified by the sovereign. The consuls and other Roman generals were allowed to grant general truces covering the period of their command; but if the period was of considerable length, or if they extended the truce beyond it, the ratification of the Senate and the people was required. Even a partial truce, if made for a long period, would seem to exceed the ordinary power of the general, and he can only conclude it subject to ratification.

But as for partial truces covering a short period, it is often necessary and almost always expedient that the general should have the power to conclude them; it is necessary when he can not wait for the consent of the sovereign; it is expedient whenever the truce, by preventing useless bloodshed, can only result to the mutual advantage of both parties. Hence it is naturally presumed that the general or the commander-in-chief is invested with that power. Thus, the governor of a town and the besieging general may agree to suspend hostilities for the purpose of burying the dead or of holding a parley; they may even conclude a truce for several months, on condition, for example, that the town shall surrender if not relieved within that time, etc. Such conventions merely tend to alleviate the evils of the war, and can hardly be prejudicial to any one.

§ 238. They bind the sovereign.

All these truces and suspensions of hostilities are concluded under the authority of the sovereign, who gives his consent to some of them directly and to others through the agency of his generals and officers; they are binding upon him and he should see that they be observed.

§ 239. When the truce comes into force.

The truce binds the contracting parties as soon as it is concluded. But as far as concerns the subjects of the belligerent powers, it can not have the force of law until it has been formally proclaimed. And just as a law can not impose any obligation upon those who are ignorant of it, so a truce only binds the subjects in so far as it has been notified to them. Consequently, if the subjects, before they can have had certain knowledge of the truce, should commit any act of hostility contrary to it, they would not be punishable. But as the sovereign must carry out his promises, he is obliged to restore any prizes taken after the truce has come into force. The subjects who have failed to observe it, through ignorance of it, are not bound to make compensation any more than is their sovereign, who could not notify them sooner. The non-observance is a mischance, for which neither sovereign nor subject is responsible. If a vessel happens to be at sea when the truce is proclaimed, and on meeting with an enemy ship sinks it, the vessel is free from guilt and consequently not liable to pay damages. If it has captured the vessel he is merely obliged to restore it, since it would be a violation of the truce to retain it. But those who, of their own fault, are ignorant of the publication of the truce, are held liable for whatever harm they do in violation of it. A mere mistake, and especially a slight one, may well be allowed to go unpunished, and certainly it does not deserve the same punishment as a deliberate crime; but it does not exempt the offender from the payment of indemnity. In order to avoid as far as possible all difficulty, sovereigns make it a practice, in truces as in treaties of peace, to fix different periods, according to the situation and remoteness of the places, for the cessation of hostilities.

§ 240. Publication of the truce.

Since the truce can not bind the subjects if they are not told of it, it should be formally proclaimed in all places where it is meant to be observed.

§ 241. Acts of subjects, in contravention of the truce.

If certain subjects, whether soldiers or private citizens, violate the truce, the public faith is not thereby compromised nor the truce broken. But the offenders should be forced to make full satisfaction for the injury done, and they should be punished severely. Were the sovereign to refuse to do justice to the injured persons he would participate in the offense and himself violate the truce.

§ 242. Violation of the truce.

But if one of the contracting sovereigns, or any one under his orders, or merely with his consent, should commit an act contrary to the truce, an injury is done to the other sovereign. The truce is thereupon broken, and the injured party may immediately take to arms, not only for the purpose of continuing the operations of the war, but also in order to avenge the new injury which he has just received.

§ 243. Stipulation of a penalty to be attached to a violation of the truce.

However, it is sometimes agreed that a certain penalty shall be imposed upon the party violating the truce; and in that case the truce is not immediately broken at the first violation. If the guilty party submits to the penalty and makes good the damage done, the truce continues in force and the injured party has no further claim. But if an alternative is agreed upon, namely, that in case of a violation, either the offender shall submit to a certain penalty or the truce shall be broken, it is for the injured party to choose whether he will exact the penalty or take advantage of his right to recommence hostilities. For if the offender had the choice, the stipulation of an alternative would be useless, since by refusing to submit to the penalty, if that alone were stipulated, he would break the agreement and give the injured party the right to recommence hostilities. Moreover, in clauses of warranty such as this, it is never presumed that the alternative is stipulated in favor of the party who fails in his engagements; and it would be ridiculous to suppose that he has reserved to himself the advantage of breaking the truce by his violation of it rather than undergo the penalty. He might as well break it outright. The penal clause is intended to prevent the too ready violation of the truce; and it could only be stipulated along with an alternative for the purpose of giving the injured party the right to break, if he thinks fit, an agreement which, judging from the enemy's behavior, is not likely to be observed.

§ 244. Duration of the truce.

It is necessary to determine carefully the period of the truce in order that there may be no doubt or dispute as to the precise time when it is to begin and when it is to end. The French language, which, for those who know how to use it, is very clear and precise, furnishes terms which bid defiance to the most subtle chicanery. By the use of the words "inclusively" and "exclusively" all possible ambiguity is avoided as to the time of the commencement and of the termination of the truce. For instance, if the truce reads that it "shall last from the first of March inclusively until the fifteenth of April also inclusively," there can be no doubt; whereas if the words had simply been, "from the first of March until the fifteenth of April," it would be a question whether the two days, which mark the beginning and the end of the truce, were included in it; and, in fact, writers are divided on the point. With respect to the first of the two days it seems unquestionable that it is included in the truce; for if it is agreed that there shall be truce from the first of March, that clearly means that hostilities are to cease on the first of March. There is a little more doubt as to the day of termination, the word *until* appearing to separate it from the time of the truce. However as we often use the expression, *until a certain day inclusively*, the word *until* is not, in idiomatic usage, necessarily exclusive. And as a truce, in preventing bloodshed, is undoubtedly a favorable matter, the safest interpretation is to include the day of the termination of the treaty. Circumstances may also be of help in determining the sense. But it is a great mistake not to remove all ambiguity when to do so only costs one word more.

In conventions between Nation and Nation the word *day* should be understood as a natural day, for it is in that sense that Nations use the word as a common measure of time. The method of computing time by civil days is derived from the civil law of each Nation and varies accordingly. The natural day begins at sunrise and is twenty-four hours in length, or one diurnal revolution of the sun. Consequently, if a truce of a hundred days is agreed upon, to begin on the first of March, the truce begins at sunrise on the first of March and should continue for one hundred days of twenty-four hours each. But as the sun does not rise at the same hour throughout the year, in order to avoid all subtlety and deceit, which are unworthy of the good faith which prevails in conventions of this kind, it should certainly be understood by the parties that the truce is to terminate at sunrise as it began at sunrise. The period of a day means the time from one sunrise to another, and there should be no quibbling over the fact that the sun rises a few minutes earlier or later when the truce terminates than when it began. A general who, having made a truce of a hundred days beginning on the twenty-first of June, when the sun rises about 4 o'clock, should begin hostilities at that same hour on the day when the truce terminates, and thus take his enemy unprepared by attacking him before sunrise, such a general would certainly be regarded as guilty of deceit and bad faith.

If no day has been set for the commencement of the truce, as it is binding upon the contracting parties as soon as it is concluded (§ 239), they should have it proclaimed promptly, in order that it may be observed. For the truce is binding upon the subjects as soon as it is duly notified to them (*ibid.*); and, unless otherwise agreed, it does not take effect until the time when it is first proclaimed.

§ 245. Effects of the truce; what is and is not permitted, during it. Rule 1. Each belligerent may do in his own state what he has the right to do in time of peace.

The general effect of the truce is to cause an absolute cessation of all hostilities; and in order to avoid any dispute as to what acts are to be considered such, the general rule is that during the truce each belligerent may do, within his own dominions, whatever he would have the right to do in time of peace. Accordingly the truce does not prevent a prince from raising troops, mustering an army in his States, or marching one into them, or even calling in auxiliary troops, or repairing the fortifications of a town which is not actually being besieged. Since he may do all those things within his own dominions in time of peace, he is not prevented from doing so by the truce. Will it be claimed that, by this agreement, he has bound his hands as to things which the continuation of hostilities could not have hindered him from doing?

§ 246. Rule 2. Advantage can not be taken of the truce to do what could not be done during continuance of hostilities.

But to take advantage of the suspension of hostilities to perform without danger certain operations which are prejudicial to the enemy, and which could not be undertaken with safety during the continuance of hostilities, is an attempt to overreach and defraud the enemy with whom the agreement has been made, and the truce is thereby broken. With this general rule before us, we can decide several special cases.

§ 247. For instance, to continue the works of a siege, or to repair the breaches.

A truce between the governor of a town and the besieging general deprives both of the right to continue work on the defenses. In the case of the latter the conclusion is evident, for such work is an act of hostility. But the governor on his side can not take advantage of the truce to repair breaches or to erect new fortifications. He could not, during the continuance of hostilities, undertake such works with impunity, owing to the artillery of the besiegers; hence it would be to the prejudice of the latter for him to undertake them during the truce; and the besiegers need not allow themselves to be deceived in the matter, but may reasonably regard the attempt as a violation of the truce. But the suspension of hostilities does not prevent the governor from continuing, within the interior of the town, works which could be carried on in spite of the attacks and fire of the enemy. At the recent siege of Tournay, after the surrender of the town a truce was agreed upon; during its continuance the governor permitted the French to make preparations for attacking the citadel, allowing them to carry on their works and erect their batteries, because on his side he was engaged in clearing away from within the citadel the rubbish resulting from the explosion of a magazine and in planting his batteries on the ramparts. But he could have done all this with very little danger even after the operations of the siege had commenced; whereas the French could not have pushed forward their works with so much activity, or made their approaches or erected their batteries without losing a great many men. There was, consequently, no equality in the truce, and in that form it resulted wholly in favor of the besieging party. The taking of the citadel was thereby advanced perhaps by fifteen days.

§ 248. Or to bring help to the town.

If the truce is concluded either to settle upon the terms of capitulation or to await orders from the sovereigns of both parties, the besieged governor can not take advantage of it to bring into the town either troops or ammunition; for this would be to make use of the truce in order to overreach the enemy, which is contrary to good faith. The spirit of an agreement of this kind is clearly that things are to remain in the condition in which they are at the time the truce is concluded.

§ 249. A special case to which a different rule applies.

But the above rule does not apply to a truce entered into for some special purpose, as, for example, in order to bury the dead. Such a truce is interpreted with respect to its object. Thus, according to the terms of the truce, the parties cease firing either in all quarters or at a single point of attack only, in order that they may be able to withdraw their dead without hindrance; and while the firing is interrupted, it is not permissible to push forward the works against which the firing was directed, for that would be a violation of the truce, by making an improper use of it. But there is no reason why, during a truce of this kind, a governor may not secretly bring reinforcements into the town at a quarter remote from the point of attack. So much the worse for the besieger if, resting upon a truce of this kind, he relaxes his vigilance. The truce does not, of itself, facilitate the obtaining of reinforcements.

§ 250. Retreat of an army during a truce.

In like manner if an army, finding itself in a bad position after a battle, proposes and concludes a truce for the burial of the dead, it can not, during the suspension of hostilities, escape from its straitened position and retreat with impunity in the face of the enemy. To do so would be to take advantage of a truce to accomplish something not otherwise possible; it would be making use of the truce to lay a snare, which is contrary to the purpose of such agreements. Consequently the enemy would be justified in driving it back, as soon as it should attempt to leave its position. But if that army files off silently in the rear and thus reaches a place of safety, it will have done nothing contrary to good faith. A truce for the purpose of burying the dead implies nothing more than that neither party will attack the other while that duty of humanity is being performed. The enemy can only blame his own negligence; he should have stipulated that during the suspension of hostilities neither army should move from its position; or else he should have kept careful watch, and on perceiving the attempt to retreat, should have opposed it as he had a right to do. It is a perfectly justifiable stratagem to propose a truce for a particular object, with the design of taking the enemy off his guard and of covering a retreat.

But if the truce has been entered into for a special object only, it would be bad faith to make use of it in order to gain some advantage, as, for example, to occupy an important post, or to advance into the enemy's territory. Indeed, the latter act would be a violation of the truce; for to advance into the enemy's territory is an act of hostility.

§ 251. Rule 3. No action must be taken in disputed territory, but things must be left as they are.

Now, since the truce suspends hostilities without putting an end to the war, things must be left, during its continuance, just as they were before it, in all places the possession of which is disputed, and no movement must be made on either side to the prejudice of the other. This is the third general rule.

§ 252. Places abandoned or left unguarded by the enemy.

When the enemy withdraws his troops from a place and abandons it entirely it is a sign that he does not wish to retain possession of it; and in that case there is nothing to prevent the other belligerent from occupying the place during the time of the truce. But if there is any evidence that a post, an unfortified town, or a village has not been abandoned by the enemy, and that he still maintains his rights or his claims to it, although he leaves it unguarded, the truce prevents the other belligerent from taking possession of it. It is an act of hostility to take from the enemy that which he means to keep possession of.

§ 253. Subjects desiring to revolt against their sovereign can not be received during a truce.

It is likewise an unquestionable act of hostility to receive towns and provinces which desire to break off from the sovereignty of the enemy and come over to us. Hence, since a truce suspends all acts of hostility, we can not receive them during its existence.

§ 254. Much less can they be induced to commit treasonable acts.

Much less is it permissible during a truce to induce the subjects of the enemy to revolt, or to tempt the fidelity of his governors and his garrisons. For such acts are not only acts of hostility, but acts of a forbidden character (§ 180). As for deserters and turncoats, they may be received during the truce just as they may be received in time of peace, when there is no treaty to the contrary. And if there were such a treaty, the force of it is annulled, or at least suspended by the war coming after it.

§ 255. Subjects or property of the enemy can not be seized during a truce.

To seize subjects of the enemy or property belonging to him, unless some special provocation has been given, is an act of hostility, and consequently not permissible during a truce.

§ 256. The rule of postliminium during a truce.

And since the rule of *postliminium* is based only on the state of war (see Chapter XIV of this Book), it can not be enforced during a truce, which suspends all the acts of war and leaves matters as they stand (§ 251). Even prisoners can not during that time withdraw from the power of the enemy in order to regain their former status, for the enemy has the right to hold them captive during the war, and it is only when the war is over that his right over their liberty ceases (§ 148).

§ 257. Intercourse between subjects of the belligerents during a truce.

It is naturally permitted to the subjects of both belligerent powers to enter and leave the territory of the enemy during the truce, especially if made for a long period, just as they might do in time of peace, for hostilities are suspended. But each sovereign has the right, as he has in time of peace, to take precautions to prevent such intercourse from being hurtful to him. It is reasonable to suspect persons with whom one is about to go to war. He may even stipulate in the truce that during it he will not admit subjects of the enemy into his dominions.

§ 258. Those who are detained by an insurmountable obstacle after the expiration of a truce.

Those who enter the territory of the enemy during a truce and who, owing to sickness or some other insurmountable obstacle, are still there when the truce expires, can, in strictness, be made prisoners. It is a mishap which they could have foreseen and to which they deliberately exposed themselves. But it is the part of charity and generosity to grant them, as a rule, additional time in which to withdraw.

§ 259. Special conditions affixed to truces.

If the articles of a truce are more limited or more comprehensive than the ground just covered, they constitute a special agreement which binds the contracting parties. They must observe what they have validly promised; and the resulting obligations form a conventional law, the details of which are beyond the scope of this work.

§ 260. At the expiration of a truce, war recommences without the necessity of a new declaration.

As a truce does no more than suspend the effects of the state of war (§ 233), at the moment it expires hostilities recommence without the necessity of a new declaration. For each of the belligerents knows in advance that on the termination of the truce the war will resume its course; and the reasons which make a declaration of war necessary (see § 51) do not apply in this case.

However, a truce for a long period of years is very similar to a treaty of peace, and only differs from it in that it leaves undecided the subject of dispute. Now, as it may happen that during the long interval of the truce, the circumstances of both parties and their mutual dispositions may have greatly changed, it is entirely in accord with the love of peace, which is so becoming to sovereigns, and with the care they should show to spare the blood of their subjects and even of their enemies—it is, I repeat, entirely in accord with those dispositions not to recommence hostilities at the end of a truce during which preparations for war have been laid aside and forgotten, without making some declaration which may induce the enemy to prevent further bloodshed. The Romans have left us an example of such commendable forbearance. They had only a truce with the town of Veii, and besides, their enemies had not awaited the termination of it before recommencing hostilities; nevertheless, at the expiration of the truce, it was decided by the college of *fetials* that a demand for satisfaction should be made before continuing the war.(*a*)

§ 261. Capitulations, and those who may make them.

The capitulations made upon the surrender of towns are among the most important conventions entered into by the belligerents during the course of the war. They are generally concluded between the besieging general and the governor of the town, each acting under the authority belonging to his office or to his commission. We have elsewhere laid down (Book II, Chap. XIV) the principles regulating the delegation of power to subordinate officers, and have given general rules for their application; and the whole subject is briefly considered in a subsequent section, and applied in particular to generals and other commanding officers (§ 237). Since a general and a governor of a town should naturally be invested with all the powers necessary for the fulfillment of the duties of their office, we are justified in presuming that they have them; and the power to conclude terms of capitulation is certainly among them, especially when the officer can not await the orders of the sovereign. Accordingly, a treaty of that kind made by them is valid and binds the sovereigns in whose name and by whose authority they have acted.

§ 262. Stipulations which may be contained in them.

But it must be carefully noted that if these officers do not wish to exceed their powers they must be careful to keep strictly within the bounds of their office, and not to deal with matters that are not intrusted to them. In the attack and capture, and in the defense and surrender of a town, the question at issue is solely one of

---

(*a*) Livy, Lib. IV, Cap. XXX.

possession, not of ownership or right; and the fate of the garrison is also involved. Accordingly, the commanders may stipulate as to the manner in which the capitulating town shall be possessed; the besieging general may promise to protect the inhabitants, to maintain the established religion and the franchises and privileges of the town. And as to the garrison, he may allow it to march out with arms and baggage, and with all the honors of war, or he may agree that it be escorted to a place of safety, etc. The governor of the town may surrender the garrison unconditionally, if circumstances force him to do so; he may surrender himself and his garrison as prisoners of war; or he may promise that they will not bear arms against the same State and its allies for a given period or even until the end of the war; and his promise is binding upon those under his command, who are obliged to obey him so long as he keeps within the limits of his authority (§ 23).

But if the besieging general should undertake to promise that his sovereign will not annex the conquered town to his dominions, or that he will restore it after a certain time, he would be exceeding the limits of his authority in dealing with matters not committed to his charge. And the same must be said of the governor who by the terms of capitulation should undertake to alienate his town forever, or to contract away the right of his sovereign to retake it, or promise that the garrison will never again bear arms, even in a future war. His authority does not extend so far. Hence, if in conferring upon the terms of capitulation, one of the opposing generals should insist upon terms which the other believes it to be beyond his authority to grant, the proper step to take is to agree to a truce, during which matters will remain in their existing condition until orders have been received from those in authority.

§ 263. Faithful observance of capitulations, and the advantages thereof.

In the beginning of this chapter we pointed out why there was no need of proving in this place that all conventions made during the course of the war should be faithfully observed. Let us merely remark, on the subject of capitulations in particular, that if perfidy is iniquitous and shameful, it is also frequently hurtful to him who is guilty of it. What confidence can thereafter be placed in him? The towns which he may attack will hold out through the most cruel extremities rather than trust to his word. He strengthens his enemies by forcing them to make a desperate defense, and whatever sieges he undertakes will be attended with horror. On the other hand, fidelity to one's word wins confidence and affection; it facilitates enterprises, removes obstacles, and paves the way for great successes. Of this we have a noble example in the conduct of George Baste, general of the imperialists, towards Battory and the Turks, in 1602. When the rebels of Battory's party had captured Bistrith, otherwise named Nissa, Baste retook the town, under terms of capitulation which were violated in his absence by some German soldiers. But as soon as he learned of the fact on his return he caused the guilty soldiers to be hanged and indemnified out of his own purse the inhabitants who had sustained damages. This conduct made so great an impression upon the rebels that they submitted to the Emperor without asking other security than the word of General Baste.(*a*)

§ 264. Promises made to the enemy by individuals.

Individuals, whether belonging to the army or not, who come singly in contact with the enemy are from the necessity of the case thrown back upon their own resources; they may make terms with respect to their own persons, just as a commander may make terms for himself and his army; so that if they make any promise by reason of the circumstances in which they find themselves, provided it

---

(*a*) *Mémoires de Sully*, edited by M. de l'Ecluse, Tom. IV, pp. 179, 180.

does not relate to matters which can never be within the competence of an individual, the promise is valid as having been made with sufficient authority. For when a subject can neither obtain orders from his sovereign, nor enjoy the sovereign's protection, he resumes his natural rights, and should provide for his safety by all just and honest means. Accordingly, when such an individual has promised a certain sum for his ransom, not only is the sovereign not able to release him from his promise, but he should force him to fulfill it. The welfare of the State demands that good faith be kept, and that subjects should have that means of saving their lives or of recovering their liberty.

Accordingly, when a prisoner is released on his parole, he is bound to observe it scrupulously, and his sovereign is not justified in preventing him from doing so; for had he not given his parole the prisoner would not have been released.

Thus also, the inhabitants dwelling in the open country, or in villages, or in unfortified towns should pay the contributions which they have promised in order to save themselves from pillage.

Further still, it would even be lawful for a subject to renounce allegiance to his country, if the enemy has him in captivity and will spare his life only upon that condition, for from the moment that his State can not protect and defend him he resumes his natural rights. And besides, if he were to refuse those terms, what would the State gain by his death? I grant that so long as there remains any hope or any means of serving his country, a man should expose himself to any danger for it; but I am here supposing a case in which a subject must either renounce his country or die without being of any service to it. If by his death he could be of service to it, it would be noble of him to imitate the heroic devotion of the Decii. A subject could not, however, promise to serve against his country, and a brave man would rather die a thousand deaths than agree to anything so shameful.

If a soldier, meeting an enemy in an out-of-the-way place, makes him prisoner, and promises to spare his life or to grant him his liberty on condition of a certain ransom, the agreement should be respected by those in command; for it would seem that the soldier, being left on that occasion to his own discretion, has not acted in excess of his power. He might have thought it imprudent to attack that enemy, and accordingly might have allowed him to escape. When under his superiors it is his duty to obey, but when left to himself he can act at his own discretion. Procopius relates the case of two soldiers, a Goth and a Roman, who, having both fallen into a pit, promised to spare each other's lives; and the agreement was respected by the Goths.(*a*)

(*a*) Procopius, *Goth.*, Lib. II, Cap. I; cited by Pufendorf, Lib. VIII, Cap. VII, § 14.

CHAPTER XVII.

Safe-conducts and Passports, and Questions Relating to the Ransom of Prisoners of War.

§ 265. Nature of safe-conducts and passports.

Safe-conducts and passports are a sort of warrant which gives to the bearer the right to go to and fro in safety, or to transport certain property in safety. In idiomatic usage the term "passport" applies to a warrant made use of on ordinary occasions by persons who meet with no special interference in going and coming, but to whom it is granted for their greater security and for the avoidance of all questioning, or in order to dispense them from some general prohibition. A *safe-conduct* is given to persons who could not otherwise enter with safety the dominions of the sovereign granting it, as, for example, a person accused of a crime, or the subject of a hostile State. It is of safe-conducts that we shall here treat.

§ 266. By what authority they are given.

All safe-conducts, like every other command of the supreme power, proceed from the authority of the sovereign. But the sovereign may delegate to his officers the power to grant safe-conducts, and this power is conferred upon them either expressly or by implication from the nature of their duties. The general of an army, from the very nature of his position, can grant safe-conducts. And since safe-conducts proceed, although indirectly, from the sovereign authority, they must be respected by the other generals and officers of the same prince.

§ 267. They can not be transferred from one person to another.

The person in whose name the safe-conduct is made out can not transfer his privilege to another; for he does not know whether it is a matter of indifference to the grantor that another person should use it in his stead. He can not presume that to be the case; indeed, considering the abuses which might result from such a transfer, he should presume the contrary; he can not claim a greater right than the grantor meant to give him. If the safe-conduct is granted not for persons, but for certain property, the property may be conveyed by others than the owner; it is a matter of indifference who conveys the property, provided the grantor of the safe-conduct has no good reasons for suspecting him and refusing him admittance into his dominions.

§ 268. Extent of the security promised.

The promise of security contained in a safe-conduct holds good wherever the grantor is in authority, not only in his dominions, but also in all places where his troops happen to be. And not only must he refrain from violating the safe-conduct either in his own person or in that of his people, but he must also protect and defend the bearer of it, and must punish those of his subjects who have attacked him, and force them to repair the injury.

§ 269. How to determine what right is conferred by a safe-conduct.

Since the right conferred by a safe-conduct proceeds entirely from the will of the grantor, that will is the rule and measure of the right conferred; and the will of the grantor is to be found in the purpose for which the safe-conduct has been granted. Consequently a person who has been granted permission to depart has not the right to return, and a safe-conduct allowing a simple passage through the country can not be used in repassing. A safe-conduct granted for the settlement of certain business affairs should remain in force until the business has been concluded and the person has had time to depart. If the safe-conduct reads that it is granted "for a journey," it can be used to return into the country, for a journey comprises both the going and the returning. Since this privilege consists in the right to come and go in safety, it differs from the permission to take up a residence, and consequently it does not confer the right to stop in a place and make a long stay there, except when a stay is required by business affairs for the settlement of which the safe-conduct was asked and granted.

§270. Whether it includes baggage and servants. A safe-conduct granted to a traveler naturally includes his baggage or his clothes and other things required for the journey, and even one or two servants, or more, according to his station in life. But in all these matters, as in others we have just referred to, the safest plan, especially when the bearer of the safe-conduct is an enemy or other suspected person, is to specify every detail, in order to leave no room for doubt. This is the practice observed at present, and the servants and baggage allowed to the person are both mentioned in the safe-conduct.

§ 271. A safe-conduct granted to a father does not include his family. Although the permission granted to the father of a family to settle in a place naturally includes his wife and his children, the same rule does not hold for safe-conducts, because it seldom happens that a man settles in a place without having his family with him, whereas he generally travels unaccompanied by them.

§ 272. Safe-conducts granted in general terms to a person and his retinue. A safe-conduct granted to a person *for himself and his retinue* does not give him the right to bring with him persons justly suspected by the State, or fugitive or exiled criminals; nor can it be used to conduct such persons to a place of safety, for the sovereign who grants the safe-conduct in those general terms does not suppose that the bearer will presume to use it to bring into the State criminals and other persons who have particularly offended him.

§ 273. Duration of a safe-conduct. A safe-conduct given for a specified time expires at the end of that period, and if the bearer has not withdrawn before that date he may be arrested and even punished, according to circumstances, especially if he has rendered himself an object of suspicion by the excuse he offers for his delay.

§ 274. Case of a person unavoidably detained beyond the prescribed time. But if the bearer of a safe-conduct is detained by some unavoidable cause, as by sickness, and can not depart on time, he should be allowed a reasonable delay, for he has been promised a safe passage, and although the promise was only made to hold good for a certain period, it is not his fault that he is unable to depart within the prescribed time. The case is different from that of an enemy subject who enters the country during a truce; for no special promise has been made to such a person, and it is at his own peril that he takes advantage of a general right given by the suspension of hostilities. No more is promised to the enemy by the truce than that hostilities will cease until a certain date; and when the time is up it is important that the belligerents should be able freely to recommence hostilities without being embarrassed by a multitude of excuses and pretexts.

§ 275. A safe-conduct does not expire at the death of the grantor. A safe-conduct does not expire at the death of the sovereign granting it, or at the moment of his deposition; for it was given in virtue of the sovereign power, which does not die, and the efficacy of which is independent of the person exercising it. The same rule holds for safe-conducts as for other decrees of the sovereign power; their validity and duration do not depend upon the life of the sovereign enacting them, unless from their very nature, or owing to an express declaration, they are personal to him.

§ 276. How it may be revoked. That fact, however, does not prevent the successor from revoking the safe-conduct, if he has good reasons for doing so. Under such circumstances the grantor himself could properly revoke it, and he is not bound always to give his reasons. All privileges may be revoked when they become hurtful to the State; if gratuitous, they are revocable by a simple decree; if given for a consideration, on indemnifying the interested parties. Suppose that a prince or his general is preparing for a secret expedition; is he to permit a person who has previously obtained a safe-conduct to come and spy upon his preparations and then go and inform the enemy of them? But, on the other hand, a safe-conduct must not prove a snare to the holder; when it is revoked he must be given time and liberty to withdraw in safety. If he is detained for a time, as any other traveler might be, to prevent him from carrying information to the enemy, he should not be ill-treated, and should be released as soon as the reason for his detention ceases to exist.

§ 277. A safe-conduct containing the clause, "for such time as we shall think fit."

If the safe-conduct contains the clause "for such time as we shall think fit," it confers merely a precarious right, and may be revoked at any time; but so long as it has not been expressly revoked it remains valid. It expires at the death of the grantor, who from that moment no longer desires the continuance of the privilege. But it must always be understood that when the safe-conduct expires in this way the holder should be given time to withdraw in safety.

§ 278. Conventions concerning the ransom of prisoners.

Having treated of the right to make prisoners of war, of the obligation of the captor to release them, either by exchange or by ransom, when peace is restored, and of the duty of their sovereign to deliver them, we have now to consider the nature of the conventions which have for their object the deliverance of those unfortunate persons. If the belligerent sovereigns conclude a cartel for the exchange or ransom of prisoners, they must observe it with the same fidelity due to any other convention. But if, as was frequently done in former times, the State leaves to each prisoner, at least during the continuance of the war, the duty of ransoming himself, there arise, with reference to agreements of this individual character, many questions of which only the more important can be touched upon here.

§ 279. The right to exact a ransom is transferable.

Whoever has acquired a lawful right to demand a ransom of his prisoner may transfer his right to a third party. That has been a common practice in the last centuries. Soldiers have frequently turned over their prisoners to others, and transferred all the rights which they possessed over them. But since a captor is obliged to treat his prisoner justly and humanely (§ 150), if he wishes to be free from blame he should not transfer his right unconditionally to a person who might make an improper use of it. When a captor has agreed with his prisoner as to the amount of the ransom, he may transfer to whomsoever he pleases the right to demand it.

§ 280. How the ransom contract may be annulled.

When once the agreement made with a prisoner as to the amount of his ransom has been concluded, it constitutes a perfect contract, and can not be rescinded on the ground that the prisoner is found to be richer than was believed, for it is not necessary that the amount of the ransom be proportionate to the wealth of the prisoner; it is not on that basis that the right to retain a prisoner of war rests (see §§ 148, 153). But it is natural to proportion the amount of the ransom to the rank which the prisoner holds in the enemy's army, since the freedom of an officer of distinction is of greater consequence than that of a private soldier or of an officer of lower rank. If the prisoner has not only not made known but has disguised his rank, he is guilty of fraud, and his act justifies the rescission of the contract.

§ 281. Case of a prisoner dying before payment of ransom.

If a prisoner who has made a contract as to the amount of his ransom dies before having paid it, it is asked whether the contract constitutes a debt which the heirs are obliged to pay. It unquestionably does, if the prisoner was released before death; for from the moment he received his liberty, in return for which he promised a certain sum, the sum is due and does not belong to his heirs. But if he had not been released before death, neither he nor his heirs owe the stipulated sum unless it was otherwise agreed; and he is not regarded as having been released until the moment when he has full liberty to go off free, when neither the person who holds him prisoner, nor that person's sovereign, opposes his release and his departure.

If a prisoner has merely been permitted to make a journey in order to induce his friends or his sovereign to furnish him with the amount required for his ransom, and if he dies before he has been released from his parole and set at liberty, the ransom money is not due.

If, after having agreed upon the ransom, the prisoner is held captive until the moment of payment, and happens to die before it is made, his heirs are not liable for it, since an agreement of that kind is no more than a promise on the part of the person who holds the prisoner captive that he will give him his liberty upon the actual payment of the money. In a bargain and sale the intending purchaser is not obliged to pay the price of the article if the latter happens to be destroyed before the sale is completed. But if the contract of sale be consummated the purchaser must pay the price of the article sold, even though it should be destroyed before delivery, provided the loss of the article be not due to any fault or delay on the part of the vendor. For this reason, if the prisoner has fully concluded the agreement for his ransom, so that he acknowledges himself as debtor of the stipulated sum, though he is detained no longer as prisoner, but as security for the payment, his death in the meantime does not cancel the obligation to pay the ransom.

If the agreement stipulates that the ransom shall be paid on a certain day, and the prisoner happens to die before that day, the heirs are under obligation to pay it. For the ransom was due, and the specified date merely marked the time within which payment had to be made.

§ 282. Release of a prisoner on condition of his obtaining the release of another.

It follows logically from the above principles that if a prisoner is released on condition of his obtaining the release of another, he should return to prison in case the latter happens to die before his release can be procured. But assuredly an unfortunate case of this kind deserves consideration, and it would seem only fair to leave the prisoner in the enjoyment of the liberty which it was intended he should have, provided, however, he pays a just equivalent in place of the stipulated ransom which he can no longer give.

§ 283. Second capture of a prisoner before he has paid his first ransom.

If a prisoner who has promised but not paid his ransom is set entirely at liberty, and then happens to be captured a second time, it is clear that, without being dispensed from the payment of his first ransom, he will have to pay a second one if he wishes to be released.

§ 284. Recapture of a prisoner by his own party before he has been set at liberty.

On the other hand, although the prisoner has agreed upon the amount of his ransom, if, before the agreement has been carried out, before he has been actually set at liberty, he is retaken and delivered by his own party, he is under no obligation to pay. I am supposing, as is evident, that the ransom contract was not consummated, that the prisoner had not acknowledged himself as debtor of the stipulated sum. His captor had merely made, as it were, a promise to sell, and he had promised to buy, but the sale had not actually taken place; the ownership had not been transferred.

§ 285. Whether the personal effects which a prisoner has been able to keep belong to him.

The ownership of the prisoner's property does not pass to the captor, except in so far as the latter seizes it at the same time that he captures the prisoner. Of this there can be no doubt in these modern times, when prisoners of war are not reduced to slavery. And even by the Law of Nature the ownership of the property of a slave does not pass, without other reasons, to the owner of the slave; there is nothing in slavery which can of itself produce that effect. Does it follow from the fact that a man has rights over the liberty of another that he has rights over his property as well? When, therefore, the captor has not despoiled his prisoner, or the latter has found means of concealing something from the search, whatever he has kept belongs to him, and he may make use of it for the payment of his ransom. At the present time prisoners are not always despoiled; a greedy soldier may commit the offense, but an officer would consider himself dishonored if he took from them the least thing. At the battle of Rocoux some French troopers, of the rank of privates, captured an English general, but they assumed no further right than to deprive the prisoner of his arms.

§ 286. Hostage given for release of a prisoner.

The death of a prisoner puts an end to the rights of his captor. Consequently a person who has been given as a hostage for the release of a prisoner should be immediately set free if the prisoner happens to die; whereas if the hostage dies the prisoner is not thereby restored to liberty. The opposite rule would hold if one person were substituted for another, instead of being given as a hostage.

CHAPTER XVIII.

Civil War.

§ 287. Foundation of the sovereign's rights against rebellious subjects.

It is a much-discussed question whether the sovereign must observe the ordinary laws of war in dealing with rebellious subjects who have openly taken up arms against him. A flatterer at court or a cruel tyrant will immediately answer that the laws of war are not made for rebels, who deserve nothing better than death. Let us proceed more temperately and argue the matter upon the incontestable principles laid down in an earlier chapter. In order to understand clearly what conduct a sovereign should observe towards his rebellious subjects we must first of all remember that the rights of the sovereign are derived wholly from the rights of the State itself or of the civil society, from the duties intrusted to him, and from the obligation he is under to watch over the welfare of the Nation, to procure its greatest happiness, and to maintain order, peace, and justice within the country (see Book I, Chap. IV). Next, we must distinguish the nature and the degree of the various disorders which may disturb the State and force the sovereign to take to arms, or to substitute forcible measures where his authority has failed.

§ 288. Who are rebels.

The name of *rebels* is given to all subjects who unjustly take up arms against the ruler of the society, whether with the design of deposing him from the supreme authority, or of merely resisting his orders in some particular instance and making him accept their terms.

§ 289. Popular tumults, seditions, and insurrections.

A popular tumult is a disorderly gathering of people who refuse to listen to the voice of their superiors, whether they be disaffected towards their superiors themselves or merely towards certain private individuals. These violent movements occur when the people believe themselves harassed, and they are more often caused by tax-collectors than by any other class of public officers. If the anger of the people is directed particularly against the magistrates or other officers invested with the public authority, and if it is carried so far as to result in positive disobedience or acts of violence, the movement is called a *sedition*. And when the evil extends and wins over the majority of the citizens in a town or province, and gains such strength that the sovereign is no longer obeyed, it is usual to distinguish such an uprising more particularly by the name of an *insurrection*.

§ 290. How the sovereign should suppress them.

All these acts of violence disturb the public order and are crimes against the State, even when they are based upon just grounds of complaint, for violent measures are forbidden in civil society; persons who are injured should go to the magistrates for relief, and if they can not obtain justice from them they can carry their complaints to the foot of the throne. Every citizen should suffer patiently evils that are not unendurable rather than disturb the public peace. It is only a denial of justice on the part of the sovereign, or deliberate delays, that can excuse the violence of a people whose patience is exhausted, and can even justify it, if the evils are intolerable and the oppression great and manifest. But how is the sovereign to treat the insurgents? I answer, in general in the manner that is at once most in accord with justice and conducive to the welfare of the State. If he must suppress those who unnecessarily disturb the public peace, he should show clemency towards the unfortunate persons who have just grievances and whose only crime is that of having undertaken to obtain justice for themselves; they are wanting in patience rather than in loyalty. Subjects who rise up against their prince without cause deserve the severest punishment. But here, also, the number of the guilty forces the sovereign to show mercy. Shall he depopulate a town or a province in order to quell its rebellious citizens? Certain forms of punishment, however just in themselves, become cruelty when extended to too great a number of persons. Even had the Netherlands rebelled without cause against Spain, we should still remember with horror the Duke of Alva, who boasted of having caused twenty thousand heads to fall under the axe of the executioner. Let not his bloody imitators hope to justify their excesses on the plea of necessity. Who was ever treated more shamefully by his subjects than the great Henry IV? Yet he always pardoned the conquered, and in the end he obtained a victory worthy of so noble a prince—he won over his enemies to be loyal subjects; whereas the Duke of Alva lost for his master the United Provinces. When the crime is shared in by many, the punishment should be meted out to them as a body; the sovereign may deprive a town of its franchises, at least until it has fully acknowledged its guilt, while he will reserve severer punishment for the authors of the disturbance, for those firebrands who incite the people to revolt. But only a tyrant will treat as rebels those brave and resolute citizens who exhort the people to protect themselves from oppression and to maintain their rights and privileges. A good prince will commend those noble patriots, provided their zeal is tempered with moderation and prudence; if he puts justice and duty first, if he aspires to the lofty and immortal honor of being the father of his people, let him distrust the selfish suggestions of the minister who represents to him as rebels all citizens who do not hold out their hands to the chains of slavery and who refuse to bow without a murmur under the rod of a despotic rule.

§ 291. He must keep his promises to the rebels.

The surest method of appeasing seditions, and at the same time the most just one, is to satisfy the grievances of the people. If they have revolted without cause, which perhaps is never the case, the sovereign must even then, as we have just observed, grant an amnesty to the greater number of them. Once the amnesty has been published and accepted, all the past must be forgotten, and no one is to be called to account for what happened at the time of the disturbance; and, in general, the sovereign, scrupulous in the observance of his word, must be faithful in keeping whatever promises he has made even to the rebels—I mean to those of his subjects who have revolted without reason or without necessity. If his promises are not inviolable there will be no security for the rebels in treating with him; once they have drawn the sword they will have to throw away the scabbard, as one of the ancients expressed it: the prince will be deprived of the gentler and more effective means of quelling the revolt, and the only means left to him will be the complete extermination of the rebels. Despair will strengthen their resistance; sympathy will bring them help and increase their numbers, and the State will find itself endangered. What would have become of France if the League had been unable to trust the promises of Henry the Great? Accordingly, the same reasons which should make fidelity to promise a sacred and inviolable duty between individual and individual, sovereign and sovereign, enemy and enemy (Book II, §§ 163, 218, and foll.; Book III, § 174), hold good to their fullest extent between the sovereign and his rebellious subjects. However, if they have extorted from him unreasonable terms which are contrary to the welfare of the Nation and the safety of the State, in such case, since he has no right to do anything or grant anything in opposition to that high standard which is the rule of his conduct and the measure of his authority, he may justly revoke injurious concessions, after obtaining the consent of the

Nation, whose opinion he must ask in the manner and after the forms prescribed in the Constitution of the State. But this remedy is to be used with reserve, and only where great interests are at stake, lest the principle of fidelity to promises should be impaired.

§ 292. Civil war.

When a party is formed within the State which ceases to obey the sovereign and is strong enough to make a stand against him, or when a Republic is divided into two opposite factions, and both sides take up arms, there exists a *civil* war. Some authors limit the term to a just uprising on the part of subjects against their sovereign, in order to distinguish such lawful resistance from the open and unlawful resistance which is termed a *rebellion*. But what name will they apply to a war which breaks out in a Republic between two contending factions, or in a monarchy between two claimants to the throne? Custom applies the name of civil war to every war between the members of the same political society; if the war is between a body of the citizens on the one hand and the sovereign with those loyal to him on the other, nothing further is required to entitle the insurrection to be called *civil war*, and not *rebellion*, than that the insurgents have some cause for taking up arms. The term *rebellion* is only applied to an uprising against lawful authority, which is lacking in any semblance of justice. The sovereign never fails to stigmatize as *rebels* all subjects who openly resist his authority; but when the latter become sufficiently strong to make a stand against him, and to force him to make formal war upon them, he must necessarily submit to have the contest called civil war.

§ 293. Civil war gives rise to two independent parties.

It is not here in place to consider the reasons which may authorize and justify civil war; we have elsewhere treated of the cases in which subjects may resist the sovereign (Book I, Chap. IV). Putting aside, therefore, the justice of the cause, it remains for us to consider the principles which should regulate civil war, and to determine whether the sovereign in particular is obliged to observe the ordinary laws of war.

Civil war breaks the bonds of society and of government, or at least suspends the force and effect of them; it gives rise, within the Nation, to two independent parties, who regard each other as enemies and acknowledge no common judge. Of necessity, therefore, these two parties must be regarded as forming thenceforth, for a time at least, two separate bodies politic, two distinct Nations. Although one of the two parties may have been wrong in breaking up the unity of the State and in resisting the lawful authority, still they are none the less divided in fact. Moreover, who is to judge them, and to decide which side is in the wrong and which in the right? They have no common superior upon earth. They are therefore in the situation of two Nations which enter into a dispute and, being unable to agree, have recourse to arms.

§ 294. They should observe the established laws of war.

That being so, it is perfectly clear that the established laws of war, those principles of humanity, forbearance, truthfulness, and honor, which we have earlier laid down, should be observed on both sides in a civil war. The same reasons which make those laws of obligation between State and State render them equally necessary, and even more so, in the unfortunate event when two determined parties struggle for the possession of their common fatherland. If the sovereign believes himself justified in hanging the prisoners as rebels, the opposite party will retaliate; if he does not strictly observe the capitulations and all the conventions made with his enemies, they will cease to trust his word; if he burns and lays waste the country they will do the same; and the war will become cruel, terrible, and daily more disastrous to the Nation. The shameful and barbarous excesses of the Duke de Montpensier against the reformed party in France are well known. He delivered up the men to the executioner and the women to the brutality of one of his officers. What was the result? The reformed party became exasperated; they avenged the barbarous treatment shown them, and the war, already a cruel one, as being both a civil and religious conflict, became even more dreadful and destructive. Who can read without horror of the savage cruelties of Baron des-Adrets? By turns Catholic and Protestant, he was conspicuous for his barbarity on both sides. Finally he was driven to abandon his authority as judge over men who were able to maintain their cause sword in hand, and who thus forced him to treat them not as criminals, but as enemies. Soldiers themselves have frequently refused to serve in a war in which the cruelties of the prince exposed them to retaliation on the part of the enemy. While ready to shed their blood in his service on the field of battle, officers of the highest sense of honor have considered themselves under no obligation to expose themselves to an ignominious death. Accordingly, whenever a large body of citizens believe themselves justified in resisting the sovereign, and are sufficiently strong to take to arms, war should be carried on between them and the sovereign in the same manner as between two different Nations, and the belligerents should have recourse to the same means for preventing the excesses of war and for re-establishing peace as are used in other wars.

When the sovereign has conquered the party in arms against him, when he has brought them to submit and to sue for peace, he may except from the amnesty the authors of the disturbance, the leaders of the party, and may judge them according to the laws, and punish them if they are found guilty. He may follow this course especially when dealing with those disturbances which are occasioned less by popular grievances than by the designs of certain nobles, and which deserve rather the name of *rebellion* than of *civil war*. Such was the fate of the unfortunate Duke de Montmorency. He took up arms against the King in support of the Duke of Orleans, but being defeated and taken prisoner at the battle of Castelnaudarri, he died upon a scaffold by decree of the Parliament of Toulouse. If he was generally pitied by men of principle it is because he was regarded less as a rebel against the King than as an opponent of the exorbitant power of a despotic minister, and because his heroic virtues seemed to correspond to the purity of his motives (*a*).

§ 295 The effects of civil war vary according to circumstances.

When, without ceasing to acknowledge the authority of the sovereign, subjects take up arms merely to obtain redress for grievances, there are two reasons for observing in their regard the customary laws of war: (1) the fear of rendering the civil war more cruel and destructive, from the fact, as we have already observed, that the insurgents will retaliate upon the severities of the prince; (2) the danger of committing great injustice, as a result of too great haste in punishing those we are regarding as rebels. The heat of passion attending civil strife is not favorable to the administration of pure and sacred justice; a time of greater tranquillity must be awaited. The prince will act wisely in keeping the rebels prisoners until, having restored tranquillity to the country, he is in a position to have them judged according to the laws.

As regards the other effects which the Law of Nations attributes to public war (see Chap. XII of this Book), and particularly as regards the acquisition of property captured in war, it must be observed that subjects who take up arms against their sovereign, without ceasing to acknowledge his authority, in general can not claim the benefit of those effects. Only the booty—the personal property carried off by the enemy—is regarded as lost to the owners, owing to the difficulty

---

(*a*) See the historians of the reign of Louis XIII.

of identifying it, and because of the many inconveniences attending an attempt to reclaim it. These matters are ordinarily regulated in the edict issued upon the re-establishment of peace, or in the act of amnesty.

But when the Nation is divided into two absolutely independent parties, who acknowledge no common superior, the State is broken up and the war between the two parties falls, in all respects, into the class of a public war between two different Nations. If a Republic is split up into two factions, each of which claims to form the body of the State, or if a Kingdom is divided between two claimants to the throne, the contending parties which thus sever the Nation will mutually regard each other as rebels. Here, then, we have two bodies which claim to be absolutely independent and which have no judge to decide between them (§ 293). They settle their dispute by having recourse to arms, just as two distinct Nations would do. The obligation upon the two parties to observe towards each other the customary laws of war is therefore absolute and indispensable, and the same which the natural law imposes upon all Nations in contests between State and State.

§ 296. Conduct to be observed by foreign nations.

Foreign Nations must not interfere in the domestic affairs of an independent State (Book II, § 54 and foll.). It is not their part to decide between citizens whom civil discord has driven to take up arms, nor between the sovereign and his subjects. The two parties are equally alien to them, and equally independent of their authority. It only remains for them to interpose their good offices for the re-establishment of peace, and this they are called upon to do by the natural law (see Book II, Chap. I). But if their efforts are without avail, those Nations which are not bound by treaty obligations may, in order to determine upon their own conduct, decide for themselves the merits of the case, and assist the party which seems to have justice on its side, should that party ask for their help or accept the offer of it; they may do so, I say, just as they are at liberty to take up the quarrel of one Nation with another, if they find it a just one. As for the allies of a State which is torn apart by civil war, they will find the rule for their conduct in the nature of their alliances considered in the light of existing circumstances. We have treated of this subject elsewhere (see Book II, Chap. XII, and particularly §§ 196, 197).

THE LAW OF NATIONS.

BOOK IV.

The Restoration of Peace; and Embassies.

CHAPTER I.

Peace, and the Obligation to Cultivate It.

§ 1. What peace is.

Peace is the reverse of war; it is that desirable state in which every man lives in the peaceful enjoyment of his rights, or subjects them, in case of controversy, to friendly discussion and argument. Hobbes has dared to assert that war is the natural state of man. But if by the "natural state" of man we mean (as reason requires we should) that state to which he is destined and called by his nature, we must rather say that peace is his natural state. For it is the part of a rational being to decide differences by submitting them to reason; whereas it is characteristic of the brute to settle them by force.(*a*) Man, as we have already observed (Introd., § 10), when alone and destitute of help, can not but be wretched; he needs the intercourse and assistance of his fellows if he is to enjoy the pleasures of life and develop his faculties and live in a manner suited to his nature, all of which is only possible in a time of peace. It is in time of peace that men respect one another, mutually assist one another, and live on friendly terms. They would never give up the happiness of a life of peace if they were not carried away by their passions and blinded by the base illusions of self-love. The little that we have said of the effects of war is sufficient to make clear how disastrous a measure it is. It is unfortunate for the human race that the injustice of the wicked renders war so often unavoidable.

§ 2. The obligation to cultivate it.

Nations which are influenced by humane sentiments, which are seriously intent upon the performance of their duties, and which have an enlightened sense of their true and permanent interests, will never seek their own gain at the expense of another; though solicitous for their own happiness, they will manage to combine it with that of others and bring it in accord with justice and equity. If this be their attitude they will never fail to cultivate peace. How can they fulfill the sacred duties which nature has imposed upon them if they do not live together in peace? And the state of peace is no less necessary to their happiness than it is to the fulfillment of their duties. Accordingly, the natural law obliges them in every way to seek and to promote peace. That divine law has no other end than the happiness of the human race; to that object are directed all its rules and all its precepts; they can all be deduced from this principle, that men should seek their own happiness; and morality is nothing else than the science of attaining happiness. As this is true of individuals, it is no less true of Nations—a conclusion which will readily appear to any one who will but reflect upon what we have said of the common and mutual duties of Nations, in the first chapter of Book II.

§ 3. Specific obligation devolving upon the sovereign.

This obligation to cultivate peace binds the sovereign from a twofold point of view. He owes this duty to his people, upon whom war brings numberless evils; and the obligation in this case is of the strictest and most indispensable character, since the supreme power is confided to him only for the safety and welfare of the Nation (Book I, § 39). He owes the same duty to foreign Nations,

---

(*a*) Nam cum sint duo genera decertandi, unum per disceptationem, alterum per vim; cumque illud proprium sit hominis, hoc belluarum: confugiendum est ad posterius, si uti non licet superiore. (Cicero, De Officiis, Lib. I, Cap. II.)

whose happiness is disturbed by war. We have just set forth the duty of the Nation in this respect; and as the public authority is committed to the sovereign, the duties of the society, of the Nation as a whole, devolve upon him (Book I, § 41).

§ 4. Extent of this obligation.

Since peace is so salutary to the human race, not only must the sovereign, as representing the Nation, not disturb it on his part, but he must also endeavor to promote it as far as lies in his power, and to dissuade others from violating it, and to inspire in them the love of justice, equity, and public tranquillity—the love of peace. It is one of the most beneficent offices which he can render to Nations and to the world at large. How glorious and lovable is the character of peacemaker! If a great prince could but know the advantages of it, if he would but picture to himself the great and stainless glory which that character would bring him, together with the gratitude, love, veneration, and confidence of Nations, if he realized what it is to reign over the hearts of men, he would wish thus to be the benefactor, friend, and father of the human race, and would find incomparably greater happiness in being so than in making the most brilliant conquests. Augustus, when closing the Temple of Janus, when giving peace to the world, when adjusting the disputes of kings and of Nations—Augustus at that moment shows himself the greatest of mortals; he is almost a God upon earth.

§ 5. Disturbers of the peace.

But those disturbers of the public peace, those scourges of the earth, who, consumed by an unbridled ambition, or driven on by a proud and savage nature, go to war without just cause and trifle with the peace of mankind and the blood of their subjects—those monstrous heroes, who are almost deified by the senseless admiration of the populace, are cruel enemies of the human race, and they deserve to be treated as such. Experience shows us but too well how many evils war occasions, even to Nations not involved in it; it interferes with commerce, it destroys the sustenance of mankind, it raises the prices of the most necessary articles, it gives rise to just alarm on the part of all Nations, and forces them to be upon their guard and to keep themselves armed. Consequently, he who violates the peace without cause necessarily injures even those Nations with which he is not at war, and by the pernicious example which he sets, he makes a direct attack upon the happiness and the safety of all the Nations of the earth. He justifies them in uniting together to check his designs, to punish him, and to take from him a power which he is abusing. What evils does he not draw upon his own Nation by shamefully wasting the blood of its subjects, in order to satisfy his inordinate passions, and by exposing it without necessity to the resentment of a host of enemies. A famous minister of the last century merited only the indignation of his country, which he dragged into continual wars which were neither just nor necessary. If by his genius and his unwearied efforts he won for his country brilliant victories upon the field of battle, he drew upon it, at least for a time, the hatred of all Europe.

§ 6. How long war may be kept up.

The love of peace should prevent a sovereign equally from entering upon a war without necessity, and from continuing it when the necessity for it has ceased. When a sovereign has been forced to go to war from just and weighty reasons, he may continue the operations of the war until he has attained the lawful object of it, which is to obtain justice and to put himself in a state of security (Book III, § 28).

If the cause is doubtful, the just object of the war can only be to bring the enemy to a fair compromise (Book III, § 38), and consequently it can not be continued longer than that. As soon as the enemy offers or consents to come to a compromise, the war must be discontinued.

But if a sovereign is dealing with a perfidious enemy, it would be imprudent to trust to his word or his oath. In such a case the sovereign may with perfect justice act as prudence requires, and take advantage of a successful war and follow up his victory until he has broken the excessive and dangerous power of the enemy, or forced him to give adequate security of proper conduct in the future.

Finally, if the enemy persists in rejecting fair terms, he himself forces us to push our successes until we have won a complete and final victory, by which he is reduced to submission. The proper use to be made of victory has been set forth above (Book III, Chap. VIII, IX, XIII).

§ 7. War terminates in the return of peace.

When one of the parties has been forced to sue for peace, or when both of them are weary of the war, a settlement is finally effected and terms are agreed upon. Peace comes and puts an end to the war.

§ 8. General effects of the return of peace.

The general and necessary effects of the return of peace are to reconcile the contending parties and to bring about a cessation of hostilities on both sides. It restores the two Nations to their natural state.

CHAPTER II.

Treaties of Peace.

§ 9. What a treaty of peace is. When two powers which were at war have agreed to lay down their arms, the agreement or compact in which they settle the terms of peace and regulate the manner in which it is to be restored and maintained is called the *treaty of peace*.

§ 10. By whom it may be entered into. The same power which has the right to make war, to decide upon it, to declare it, and to direct its operations has naturally the power to make peace and to enter into a treaty to that effect. These two powers go hand in hand, and the second follows naturally from the first. If the ruler of the State is authorized to judge of the causes and reasons for which war may be undertaken, of the times and the circumstances adapted to commencing it, of the manner in which it is to be supported and carried on, it is, accordingly, his part also to set limits to its course, to determine when it shall come to an end, to make peace. But this power does not necessarily include that of granting or accepting whatever terms he pleases, with a view to obtain peace. Although the State has confided to the prudence of its ruler the general duty of determining upon war and peace, it may have limited his powers in many respects by the fundamental laws. Thus Francis I, King of France, had absolute power to declare war and to make peace; yet the Assembly of Cognac declared that he could not, by the treaty of peace, alienate any part of the Kingdom (see Book I, § 265).

A Nation which is at liberty to arrange its domestic affairs and to determine the form of its government may confide to a single person, or to an assembly, the power to make peace, and at the same time not commit the power to declare war. A case in point is to be found in Sweden, where, since the death of Charles XII, the King can not declare war without the consent of the States assembled in Diet, whereas he can make peace by joint action with the Senate. It is less dangerous for a Nation to leave to its rulers the latter power than the former. It may reasonably believe that they will not make peace until it is to the interest of the State to do so. But when there is question of going to war, their passions, their selfish interests, and their private motives have too great an influence over their resolutions. Moreover, the terms of peace must be very disadvantageous if they are to be worse than war; on the other hand, it is always at great risk that peace is given up for war.

Since a sovereign whose authority is limited can not, in exercising the power to conclude peace, grant on his own authority whatever terms he pleases, those who wish to be secure in their negotiations with him should require that the treaty of peace be approved by the Nation, or by the persons empowered to carry it into effect. If, for example, a prince, in concluding a treaty of peace with Sweden, should require a defensive alliance, or a guaranty, as one of the conditions, no reliance could be placed upon the stipulation until it was approved and accepted by the Diet, which alone has the power to carry it into effect. The Kings of England have the power to conclude treaties of peace and of alliance; but they can not by these treaties alienate any of the possessions of the crown without the consent of Parliament. Neither can they, without the consent of the same body, raise any money in the Kingdom. For this reason, when they conclude a treaty of subsidy, they are careful to lay it before Parliament, in order to be sure that it will give them the power to carry out the treaty. When the Emperor Charles V sought to obtain from Francis I, his prisoner, terms which the latter could not accede to without the consent of the Nation, he should have held him prisoner until the States-General of France had ratified the Treaty of Madrid and until Burgundy had assented to it. Had he done so he would not have lost the fruit of his victory by a carelessness very surprising in a prince of his ability.

§ 11. Alienations made by a treaty of peace.

We shall not repeat here what we have said in a previous chapter concerning the alienation of a part of the State (Book I, §§ 263 and foll.), or of the whole State (*ibid.*, §§ 68 and foll.). We will call attention merely to the fact that, in cases of urgent necessity, such as those brought about by an unfortunate war, the alienations made by the prince in order to save the rest of the State are considered as approved and ratified by the mere silence of the Nation, when the Nation has not preserved in the form of its government some simple and recognized means of giving its express consent, and when it has given to the prince absolute power. The States-General has been abolished in France by failure to summon it and by the implied consent of the Nation. When, therefore, that Kingdom is in straits, it is for the King alone to judge of the sacrifices which he must make to obtain peace, and his enemies may safely treat with him. It would be idle for the people to assert that it is only from fear that they have suffered the abolition of the States-General. The fact is, they did permit it, and thereby let pass into the hands of the King all the powers needed to contract in the name of the Nation with foreign Nations. In every State there must be some one power with which foreign Nations can treat on a sure footing. An historian(*a*) has said, that "the fundamental laws prevent the Kings of France from renouncing, to the prejudice of their successors, any of their rights by treaty, whether the treaty be voluntary or compulsory." The fundamental laws may properly deny to the King the power to alienate what belongs to the State without the consent of the Nation; but they can not nullify an alienation, or a renunciation, made with that consent. And if the Nation has let matters go so far that it has no longer any means of giving its express consent, its mere silence on such occasions is in reality an implied consent; otherwise there would be no way of treating with such a State on a safe basis. To invalidate thus, in advance, all future treaties would be a violation of the Law of Nations, which requires that Nations should preserve the means of treating with one another (Book I, § 262) and of carrying out their treaties (Book II, §§ 163, 219, and foll.).

Finally, it is to be noted that in considering the question whether the consent of the Nation is needed in order to alienate a part of the State, we refer to such parts as are still under the power of the Nation, and not to those which have fallen into the power of the enemy during the war. For since the latter are no longer possessed by the Nation, it belongs to the sovereign alone, if he has the full and absolute administration of the government, and the power of making war and concluding peace—it belongs to him alone, I repeat, to determine whether it is better to abandon those parts of the State or to continue the war in the hope of recovering them. And even though it should be asserted that he can not of himself validly alienate them, he has, in the case we are supposing, namely, that he is invested with full and absolute sovereignty—he has, I say, the right to promise that the Nation will never go to war to recover those lands, towns, or provinces which he has abandoned; and that is enough to secure the enemy in the peaceful possession of what he has conquered.

(*a*) The Abbé de Choisy, *Histoire de Charles V*, p. 492.

§ 12. How the sovereign may dispose by treaty of what belongs to individuals.

The necessity of making peace authorizes the sovereign in disposing, by the treaty, even of property belonging to individuals—a step which he is warranted in taking by the right of eminent domain (Book I, § 244). He may even to a certain extent dispose of their persons, by virtue of the power which he has over all his subjects. But the State should indemnify those of the citizens who suffer in this way for the public welfare (*ibid.*).

§ 13. Whether a prince, while prisoner of war, can make a valid treaty of peace.

Every impediment by which a prince is disabled from administering the affairs of government deprives him, doubtless, of the power of concluding peace. Thus it goes without proof that a king can not enter into a treaty of peace during minority, or when insane. But it is asked whether a prince, while prisoner of war, can make peace, and validly conclude a treaty to that effect. Certain noted authors(*a*) make a distinction here between a King whose Kingdom is *patrimonial* and a King who has only the usufruct of his Kingdom. We think we have overthrown the false and dangerous conception of a patrimonial Kingdom (Book I, § 68 and foll.), and have shown clearly that the idea should be reduced to the mere power confided to the sovereign to designate his successor, to appoint another prince over the State, and to dismember certain parts of it, if he thinks fit; and that even this is to be done uniformly for the good of the Nation, and in view of its greatest welfare. Every lawful government, of whatever form, is established solely for the good and welfare of the State. Following out this incontestable principle, the making of peace ceases to be an affair peculiar to the King, but belongs to the Nation. Now it is certain that a prince, when in captivity, can not fulfill the duties of sovereign nor carry on the affairs of government. How shall he who is not free exercise authority over a Nation? How shall he govern it to the best interests of the people and for the public welfare? He does not lose his rights, it is true; but as a result of his captivity he is deprived of the power of exercising them, because he is not in a position to direct the use of them so as to attain their proper object; he is under the disability of a minor, or of one who is insane. In such a case he or they, who by the laws of the State are designated to act as regents, take up the reins of government. It is for them to arrange for peace, to settle the terms of it, and to conclude the treaty in conformity with the laws.

The captive sovereign may himself negotiate the treaty and promise to observe it as far as depends upon him personally; but the treaty does not become binding upon the Nation until ratified by the Nation itself, or by those who are invested with the public authority during the captivity of the sovereign, or, lastly, by the sovereign himself after his release.

Further, if the State should use every effort to procure the release of the least of its citizens, who has lost his liberty in the service of the State, with much greater reason does it owe this duty to its sovereign, to the ruler whose solicitude, attention and labors are consecrated to the public welfare and happiness. It is while fighting for his people that the prince has been made prisoner and reduced to a condition which is the height of wretchedness for one of his exalted rank; and shall they hesitate to procure his release at the cost of the greatest sacrifices? Nothing short of the very existence of the State should be withheld on so sad an occasion. But the safety of the State is in every case the supreme law, and in such severe straits a generous prince will imitate the example of Regulus. When that heroic citizen was sent back to Rome on his parole he dissuaded the Romans from procuring his release by a disgraceful treaty, although he knew well the tortures that were awaiting him at the hands of the cruel Carthaginians.(*b*)

(*a*) See Wolf, *Jus Gentium*, § 982.

(*b*) See Livy, *Epitom.*, Lib. XVIII, and other historians.

§ 14. Whether peace can be concluded with an usurper.

When an unjust conqueror, or any other usurper, has invaded the Kingdom, and when the people have submitted to him, and by their voluntary homage have recognized him as their sovereign, he becomes possessed of all the powers of government. Other Nations, since they have no right to interfere in the domestic affairs of that Nation or to intermeddle with its government, must abide by its decision and accept the sovereign in possession as the lawful one. They may, accordingly, negotiate with the usurper and conclude a treaty of peace with him. In so doing they do not derogate from the rights of the lawful sovereign. It is not their business to examine into his right and to pass upon it; they leave it as it is, and, in the dealings which they have with that Kingdom, they look only to the actual possessor of the sovereignty, acting thus conformably to their own rights and those of the State whose sovereignty is contested. But this rule does not prevent them from taking up the quarrel of the deposed King and giving him help, if they consider his cause a just one; in that case they declare themselves enemies of the Nation which has recognized his rival, just as when two different Nations are at war they are at liberty to assist the one whose claims appear to be the best founded.

§ 15. Allies are included in the treaty of peace.

The principal in the war, the sovereign in whose name the war is carried on, can not justly conclude peace without including in it his allies—I mean those who have given him help without taking a direct part in the war. This precaution is necessary in order to protect them from the resentment of the enemy; for although the latter has no ground for offense against his enemy's allies, who, acting merely on the defensive, do no more than carry out faithfully their treaty obligations (Book III, § 101), still it frequently happens that men are influenced by their passions rather than by justice and reason. If the alliance was not prior in date to the war, and was entered into with that very war in view, then, although the allies do not engage in the war with all their forces, nor directly as principals to the contest, they nevertheless give to the sovereign against whom they formed the alliance just grounds for treating them as enemies. The sovereign whom they have assisted must not neglect to include them in the treaty of peace.

But the treaty entered into by the principal does not bind his allies, except in so far as they are willing to be bound by it, unless they have given him full power to negotiate in their behalf. By including them in the treaty, the principal merely acquires the right to insist that his reconciled enemy shall not attack those allies because of their part in the war, nor molest them in any way, but live in peace with them as if nothing had happened.

§ 16. Members of a league must treat each for himself.

Sovereigns who, as members of a league, have taken a direct part in the war, should make separate and individual treaties of peace. Such was the method followed at Nimeguen, at Ryswick, and at Utrecht. But their alliance obliges them to treat in concert. The question of determining in what cases a member of a league can abandon the alliance and make peace for himself separately we considered when treating of leagues (Book III, Chap. VI), and of alliances in general (Book II, Chap. XII and XV).

§ 17. Mediation.

It frequently happens that two Nations are both equally weary of the war, yet still continue it from the sole reason that each fears that any advances towards peace might be attributed by the enemy to weakness; or they continue the war from bitterness of feeling, even when it is against their real interests. In such cases mutual friends may with advantage interpose their good offices, by offering themselves as mediators. It is a very beneficent act, and one well worthy of a great prince to reconcile two Nations at war, and thus prevent the shedding of human blood; it is, indeed, a sacred duty for those who are in a position to do so successfully. We content ourselves with this simple reflection upon a subject of which we have already treated (Book II, § 328).

§ 18. Upon what basis peace may be concluded.

A treaty of peace can be nothing more than a compromise. Were it necessary to frame the treaty according to the principles of strict and rigorous justice, peace would be impossible of attainment. In the first place, with respect to the cause which gave rise to the war, it would be necessary for one of the parties to recognize himself as in the wrong and condemn his own unjust pretensions, which he would hardly do unless reduced to the last extremity. But if he were to confess the injustice of his cause, he must condemn whatever he has done in support of it; he must restore what he has unjustly captured, must indemnify the enemy for the cost of the war, and repair the damage occasioned by it. And how shall a just estimate be formed of the damage done? What price can be set upon the blood that has been shed, the many lives that have been lost, the desolation that has been caused to families? Nor is that all. Strict justice would further require that the author of an unjust war should be subjected to a penalty proportionate to the injuries for which he owes satisfaction and of a character to insure the future security of the Nation he has attacked. How shall the nature of that penalty be determined or the extent of it be precisely fixed? Finally, even the sovereign whose cause was just may have exceeded the limits of justifiable self-defense, may have carried to excess hostilities begun for a lawful purpose, and may thus be guilty of wrongs for which strict justice would demand satisfaction. He may have made conquests and captured booty beyond the value of the claims he sought to enforce. Who shall make an exact estimate, a just valuation of what is due him? Since, therefore, it would be dreadful to continue the war indefinitely, or to pursue it until one of the parties has been completely annihilated, and since, however just our cause may be, we must after all look to the restoration of peace and direct our efforts constantly to that salutary object, the only recourse is to compromise the claims and grievances on both sides, and to put an end to all differences by as fair an agreement as can be reached. In so doing the original grounds of the war are left unsettled, as well as any controversies which the various acts of hostility may have given rise to; neither of the parties is condemned as unjust, a proceeding which scarcely any sovereign would submit to; but an agreement is reached as to what each belligerent shall receive in settlement for all his claims.

§ 19. General effect of the treaty of peace.

The effect of the treaty of peace is to put an end to the war and to abolish the subject of it. It takes from the contracting parties the right to commit further acts of hostility, whether in pursuance of the cause which gave rise to the war, or because of anything that has taken place in the course of it. Hence war may not be again undertaken in the same cause. Accordingly, the parties to the treaty mutually agree to observe *perpetual peace.* This does not mean that the contracting parties promise never to make war upon each other for any cause whatsoever. The treaty of peace relates to the war which it terminates, and the peace thus established is really perpetual, if it does not permit the parties to take up arms again in the same cause and thus revive the same war.

However, a special settlement upon an object in dispute merely extinguishes the particular claim referred to and does not prevent the subsequent assertion of new claims to the same object, if based upon other grounds. For this reason care is ordinarily taken to require a general settlement which covers not only the actual claims in dispute, but the object itself to which they relate; it is stipulated that all claims whatsoever to the object in question shall be renounced. And in that case, even though the party abandoning his rights should later find new reasons in proof of his title to the object, he would not be admitted to assert them.

§ 20. Amnesty.

An amnesty is a complete forgetfulness of the past; and as the treaty of peace is meant to put an end to every subject of discord, the amnesty should constitute its first article. Accordingly, such is the common practice at the present day. But though the treaty should make no mention of it, the amnesty is necessarily included in it, from the very nature of the agreement.

§ 21. Things not mentioned in the treaty.

Since each of the belligerents claims to have justice on his side, and since there is no one to decide between them (Book III, § 188), the condition in which affairs stand at the time of the treaty must be regarded as their lawful status, and if the parties wish to make any change in it the treaty must contain an express stipulation to that effect. Consequently all matters not mentioned in the treaty are to continue as they happen to be at the time the treaty is concluded. This is also a result of the promised amnesty. All the injuries caused by the war are likewise forgotten; and no action can lie on account of those for which the treaty does not stipulate that satisfaction shall be made; they are considered as never having happened.

§ 22. Things not included in the compromise or amnesty.

But the effect of the settlement or amnesty can not be extended to things which bear no relation to the war terminated by the treaty. Thus, claims based upon a debt contracted, or an injury received, prior to the war, but which formed no part of the motives for undertaking the war, remain as they were, and are not annulled by the treaty, unless the treaty has been made to embrace the relinquishment of all claims whatsoever. The same rule holds for debts contracted during the war, but with respect to objects which have no relation to it, and for injuries received during the war, but not as a result of it.

Debts contracted with individuals, or injuries received from other sources than the war, are likewise not abolished by the compromise and the amnesty, since these relate solely to their object, namely, to the war, its causes and its effects. Thus, if two citizens of the belligerent nations enter into a contract in a neutral country, or if one receives an injury from the other, an action may be brought to enforce fulfillment of the contract or to obtain redress for the injury after the conclusion of the treaty of peace.

Finally, if the treaty stipulates that all things shall be restored to the state in which they were before the war, this provision is to be understood only of real property, and can not be extended to personal property, to booty, the title to which immediately passes to the captors, and which is regarded as abandoned by its former owners, owing to the difficulty of identifying it and to the small hope of recovering it.

§ 23. Former treaties, referred to and confirmed in the new treaty, form part of it.

Former treaties, referred to and confirmed in a later treaty, form part of it, just as if they were included in it word for word; and the interpretation of new articles relating to former conventions should be conducted in accordance with the rules laid down in an earlier chapter (Book II, Chap. XVII, and, in particular, § 286).

CHAPTER III.

Execution of the Treaty of Peace.

§ 24. When the treaty comes into force.

The treaty of peace binds the contracting parties from the moment it is concluded and has passed through the formalities attending its acceptance; and they must see that it is immediately carried into effect. From that time all hostilities must cease, unless a definite day has been set when peace is to begin. But the treaty does not bind the subjects until they have been notified of it. The same rule holds here as in the case of a truce (Book III, § 239). If it should happen that officers or soldiers, while acting within the scope of their commission and pursuant to the duties appointed to them, commit any acts of hostility before the treaty of peace has properly come to their notice, it is a misfortune for which they can not be punished; but the sovereign, being bound from the start by the treaty, must restore whatever property has been captured subsequent to the conclusion of the treaty, since he has no title whatever to it.

§ 25. Proclamation of the restoration of peace.

In order to prevent such unfortunate mistakes which may cost the lives of many innocent persons, notice of the restoration of peace should be published without delay, at least to the army. But at the present day, when the people as a body can not commit any acts of hostility on their own initiative, nor take any part in the war, the solemn publication of the restoration of peace may be put off, provided orders are given to put a stop to hostilities, a measure which is easily taken by communicating with the generals who are conducting operations, or by proclaiming an armistice at the head of both armies. The restoration of peace, effected between the Emperor and France in 1735, was not proclaimed until long after. The delay was made until the treaty could be considered at leisure, the most important points having been settled in the preliminary agreements. The publication of the restoration of peace places the two nations in the state in which they were before the war; it reopens free intercourse between them, and permits the subjects of both States to enjoy once more rights denied them by the state of war. The treaty becomes, upon its publication, a law for the citizens, and they are bound thenceforth to conform to the provisions contained in it. If, for example, the treaty stipulates that one of the two Nations shall refrain from carrying on a certain branch of trade, all the citizens of that Nation are bound to give up such commerce from the time the treaty is published.

§ 26. Time of the execution of the treaty.

When a period has not been fixed within which the treaty must be executed and its several articles put into effect, reason requires that each provision should be carried out as soon as possible, that being, doubtless, what the contracting parties had in mind. The faithful observance of treaties excludes equally all carelessness, remissness, and deliberate delay in their execution.

§ 27. A valid excuse should be admitted.

But in this matter, as in every other, a valid excuse, founded upon a real and insuperable obstacle, should be admitted; for no one is held to the performance of what is impossible. The disability, when it does not arise from any fault on the part of the promisor, annuls a promise which can not be fulfilled by giving an equivalent and of which the performance can not be put off until a later date. If the promise can be fulfilled on another occasion, a suitable delay in the execution must be granted. Suppose that, by the treaty, one of the sovereigns has promised to furnish the other with a body of auxiliary troops. He will not be held bound to do so if it should happen that he has urgent need of them for his own defense. Or suppose he has promised to deliver annually a certain quantity of grain. It can not be required of him when his own Nation is suffering from famine; but on the return of plenty he should deliver, if required, the quantity by which he is in arrears.

§ 28. The obligation of the promise ceases when the promisee himself prevents fulfillment.

It is also a recognized principle that the promisor is released from his promise when, on attempting to fulfill it according to the agreement, he is prevented from doing so by the promisee himself. The promisee is regarded as rescinding a promise of which he himself prevents the fulfillment. Accordingly, let it be said further that if a sovereign who has promised something by a treaty of peace is ready to fulfill it at the time agreed upon, or, if no date was set, promptly and at a suitable time, and the other party is unwilling to have it performed, the promisor is released from his promise; for if the promisee has not reserved the right to determine at pleasure the time when it is to be performed, he is deemed to revoke it when he will not allow it to be carried out at the time set for its performance. If he asks that the fulfillment of it be deferred until a later date, the promisor is bound in good faith to consent to the delay, unless he can show that fulfillment will then be a substantially greater burden for him.

§ 29. Cessation of contributions.

To levy contributions is an act of hostility which should cease as soon as peace is concluded (§ 24). Contributions already promised, and not yet paid, are a debt, and payment of them may be exacted as such. But in order to avoid all difficulty on this point the parties to the treaty should come to a precise and definite agreement on the subject; and this they are generally careful to do.

§ 30. The fruits of land restored or ceded.

The fruits and profits of land restored by the treaty of peace are due from the moment fixed for its execution. If no date has been fixed, the fruits and profits are due from the moment when the restitution of the land was agreed to; but such as were obtained, or fell due, before the conclusion of the treaty are not given up, for the fruits of the land belong to the owner of the soil, and, in the case in question, possession is regarded as lawful title. For the same reason, when lands are ceded, the cession does not include profits already due. This point was justly maintained by Augustus against Sextus Pompey, who, when the Peloponnesus was ceded to him, claimed the payment of the taxes of the preceding years.(*a*)

§ 31. In what condition things are to be restored.

Things which the treaty of peace merely stipulates shall be restored, without further explanation, should be given back in the condition in which they were when taken; for the word "restoration" naturally signifies that things are to be restored to the condition in which they previously were. Accordingly, the restoration of a thing should include the return of all the privileges which were attached to it at the time it was taken. But this rule need not extend to the changes which may have come about as a natural consequence or effect of the war itself, and of its operations. A town must be restored to the condition in which it was at the time it was taken, as far as it happens to be still in that condition at the time peace is concluded. But if the town has been razed or dismantled during the war, such damage, being done in the exercise of the rights of war, is set at naught by the act of amnesty. When a sovereign has ravaged a country he is not bound, upon restoring it at the conclusion of peace, to give it back in its former condition; he gives it back in the condition in which it happens to be. But as it would be flagrant bad faith to devastate that country after the conclusion of peace and before it has been given up, so it would be an act of bad faith to dismantle a town before

---

(*a*) Appian, De Bello Civ., Lib. v. Cited by Grotius, Lib. II, Cap. XX, § 22.

restoring it when its fortifications have escaped destruction during the war. If the captor has repaired the breaches, if he has restored it to the condition in which it was before the siege, he should give it up in that same condition. But if he has added any new defenses he may demolish them. If, on the other hand, he has razed the old fortifications in order to construct new ones, the parties should come to an agreement as to what is to be done with the improvements, and they should define precisely in what condition the town is to be restored. Indeed, for the sake of preventing fraud and avoiding disputes, it is well never to neglect this precaution. In a treaty whose purpose is to restore peace, there should as far as possible be no ambiguity, nor any doubtful clause which might bring on a renewal of the war. I am aware that such is not the policy of those who at the present day pride themselves on being skilful negotiators. On the contrary, they study out how they may introduce into a treaty obscure or ambiguous clauses, in order to furnish their master with a pretext for stirring up another quarrel and renewing the war upon the first favorable opportunity. We have already pointed out (Book II, § 231) how contrary such contemptible subtlety is to the faithful observance of treaties. It is unworthy of the sincerity and dignity which should be manifested in all the actions of a great prince.

§ 32. The interpretation of the treaty of peace; it should be against the party who prescribed the terms.

But as it is very difficult to avoid all ambiguity in a treaty, though drawn up with the greatest care and good faith, or to anticipate and prevent all difficulties in the application of the clauses to particular cases, recourse must frequently be had to the rules of interpretation. We have given up an entire chapter to the exposition of these important rules,(*a*) and we will not indulge here in wearisome repetitions. Let us confine ourselves to certain rules which apply more particularly to the case in point, to treaties of peace.

(1) Where the meaning is doubtful, a clause is to be interpreted against the party who prescribed the terms of the treaty. For as it was he who in a measure dictated the treaty, the fault is his if it was not worded more clearly, so that in extending or restricting the meaning of the terms in the sense least favorable to him, either no wrong is done him, or one to which he wilfully exposed himself; whereas by an interpretation in his favor there would be the risk that vague and ambiguous terms might prove a snare to the weaker party, who has been obliged to accept the terms dictated by the stronger party.

§ 33. Designation of territory ceded.

(2) The names designating territory ceded by the treaty should be understood according to the ordinary acceptation of them by learned and intelligent men, for it is not to be presumed that ignorant or stupid persons would be intrusted with a matter as important as a treaty of peace; and the provisions of a contract are to be taken in the sense which the contracting parties actually had in mind, since it was upon that sense that the contract was founded.

§ 34. The restoration of conquests does not include a people who have voluntarily subjected themselves.

(3) A treaty of peace, from its very nature, relates only to the war which it terminates. Hence it is in that light that vague clauses should be understood. Accordingly, the simple stipulation that things are to be restored to their former condition does not relate to changes which have not been brought about by the war itself. Consequently a clause of that general character does not oblige one of the parties to release from their allegiance a free people who, during the war, have voluntarily subjected themselves to him. Again, since a people, when abandoned by their sovereign, become free, and may provide for their safety as they think best (Book I, § 202), if that people, during the course of the war, should voluntarily

---

(*a*) Book II, Chap. XVII.

subject themselves to the enemy of their former sovereign, without being driven to do so by force of arms, a general promise to restore conquests does not include that people. It is idle to say that the party who stipulates that all things be replaced upon their former footing may have an interest in the independence of the first of the above-mentioned peoples, and that he evidently has a very great interest in the restoration of the second. If he wished to obtain things not naturally included in the general clause, he should have stipulated for them in clear and specific terms. Agreements of any character may be inserted into a treaty of peace, but if they bear no relation to the war which the treaty is designed to terminate they must be set forth in the most express manner; for the treaty is naturally understood to refer only to its specific object.

CHAPTER IV.

The Observance and the Breach of the Treaty of Peace.

§ 35. The treaty of peace binds the nation and succeeding sovereigns.

A treaty of peace, concluded by a duly authorized agent, is undoubtedly a public treaty, which binds the whole Nation (Book II, § 154). It is, moreover, of its very nature, a *real* treaty; for if it was meant to hold good only during the life of the sovereign it would be a truce and not a treaty of peace. Besides, every treaty which is concluded, as is a treaty of peace, with a view to the public welfare is a *real* treaty (Book II, § 189). Hence it binds succeeding sovereigns to the same extent that it binds the sovereign who signed it; for it binds the State itself, and succeeding sovereigns can never have, in this respect, any other rights than those of the State.

§ 36. It should be faithfully observed.

After all that we have said of the faithful observance of treaties, and of the indispensable obligation they impose, it would be superfluous to point out the sacred obligation upon sovereigns and Nations to observe treaties of peace in particular. Treaties of peace affect and bind the contracting Nations as a whole; they are of the utmost importance; a breach of them infallibly revives the war; so that these further reasons give additional force to the obligation to keep faith, to conscientiously fulfill the promises made in them.

§ 37. The plea of fear or constraint does not dispense from its observance.

A sovereign can not dispense himself from observing a treaty of peace by alleging that it was extorted from him by fear or by constraint. In the first place, if this plea were admitted, it would make it impossible for any reliance to be put upon treaties of peace; for there are few such treaties against which that plea could not be brought as a cover for bad faith. To authorize such an evasion would amount to an attack upon the common safety and welfare of Nations; the principle would be condemned as abhorrent by the same reasons which make the faithful observance of treaties a universally sacred duty (Book II, § 220). Besides, the plea would be almost always disgraceful and absurd. It hardly ever happens at the present day that a Nation waits until it is reduced to the last extremity before making peace; it may have been defeated in several battles, but it can still defend itself; and it is not without resources so long as it has men and arms. If a Nation finds it prudent to procure, by a disadvantageous treaty, a necessary peace; if it delivers itself from imminent danger, or from complete destruction, by making great sacrifices, whatever it thus saves is an advantage which it owes to the treaty of peace; it freely chooses a loss that is present and certain, but limited in extent, in preference to a disaster, not yet arrived, but very probable, and terrible in character.

If ever the plea of constraint may be admitted, it is against an agreement which does not merit the name of a treaty of peace, against a forced submission to terms which are equally contrary to justice and to all the duties of humanity. If an ambitious and unjust conqueror subdues a Nation, and forces it to accept hard, disgraceful, and unendurable terms of peace, necessity may constrain the Nation to submit to them. But this show of peace is not real peace; it is oppression, which the Nation endures so long as it lacks the means to free itself; it is a yoke which men of spirit will throw off upon the first favorable opportunity. When Fernando Cortez attacked the Empire of Mexico without the smallest shadow of reason, without even a pretext of any kind, if the unfortunate Montezuma had been able to purchase his liberty by submitting to the equally harsh and unjust terms of admitting a garrison into his towns and his capital, of paying an enormous tribute, and of receiving orders from the King of Spain, will any one in all honesty assert that Montezuma would not have been justified in seizing a favorable opportunity to recover his rights and deliver his people by driving out and exterminating the avaricious, insolent, and cruel usurpers? No; the idea is too absurd to be maintained seriously by anyone. Although the natural law prescribes fidelity to promises as a means of securing the welfare and peace of Nations, it does not favor oppressors. All of its principles are directed to procuring the greatest good of mankind; that is the great end of all laws, written and unwritten. Shall he who himself violates all those principles which bind society together be allowed to invoke the aid of them? If it happens that the plea of constraint is abused, and is offered by a Nation as a pretext for revolting without just cause and renewing the war, it is better to risk that evil than to furnish usurpers with an easy means of perpetuating their injustice and establishing their usurpation upon a solid foundation. But when it is sought to preach a doctrine which is contrary to all the instincts of human nature, where shall hearers be found?

§ 38. In how many ways a treaty of peace may be violated.

Equitable adjustments, or those which are at least endurable, alone deserve, therefore, to be called treaties of peace. It is such treaties which bind the public faith and which should be conscientiously observed, though found to be hard and burdensome in certain respects. Since the Nation has consented to them it must look upon them as an advantage, considering the circumstances under which they were made; and it should respect its word. If men could unmake at a later date contracts which they were glad to make at an earlier date, there would be no stability in their dealings with one another.

To violate a treaty of peace is to set at naught the agreements it contains, either by doing what it forbids or by not doing what it prescribes. Now a State may fail to carry out the obligations of a treaty in three different ways: by conduct contrary to the nature and essence of treaties of peace in general; by acts inconsistent with the nature of the particular treaty in question; and finally by a violation of one of the express provisions of the treaty.

§ 39. Firstly: By conduct contrary to the nature of treaties of peace in general.

In the first place, a Nation acts contrary to the nature and essence of treaties of peace in general, and to peace itself, when it disturbs peaceful relations without cause, whether by taking up arms and renewing the war, although it can not advance even a plausible pretext for doing so, or by wantonly offending the Nation with which it has concluded peace, treating it or its subjects in a manner which is inconsistent with the state of peace and doing acts which that Nation could not submit to without failing in its duty to itself. Again, it is contrary to the nature of treaties of peace in general to take up arms for the same cause which gave rise to the war terminated by the treaty, or to do so out of resentment for anything that has taken place during the course of the war. If not even a plausible pretext, based upon some new grounds, can be advanced, the Nation is clearly reviving the old war and violating the treaty of peace.

§ 40. To take up arms in a new cause is not a breach of the treaty of peace.

But to take up arms in a new cause is not a violation of the treaty of peace. For although a Nation has promised to live at peace with another, it has not thereby promised to submit to injuries and injustice of every kind rather than go to war to obtain justice. The breach of the treaty is on the part of the Nation which, by its obstinate injustice, renders such measures necessary.

But here we must call attention to what we have observed more than once, namely, that Nations acknowledge no common judge upon earth, that they can not mutually pass final sentence upon one another, and that they are after all obliged to conduct their quarrels as if both parties were equally acting upon their rights. From this point of view, whether the new cause which gives rise to the war be just or not, neither the Nation which makes use of that opportunity to take up arms nor the Nation which refuses satisfaction is considered as violating the treaty of peace, provided that the ground of complaint on the one side and the refusal of satisfaction on the other has some show of justice, so that the matter is open to dispute. When Nations can come to no agreement upon a question of this nature they have no other recourse than to take to arms. In such case the war is a new one and does not involve a violation of the treaty of peace.

§ 41. A subsequent alliance with an enemy of the other State is not a breach of the treaty.

And since, in concluding peace, a Nation does not thereby renounce the right to enter into alliances and to assist its friends, it is not a breach of the treaty of peace to form a subsequent alliance with the enemies of the State with which the treaty has been concluded—to take up their quarrel and to make common cause with them—unless the treaty of peace expressly forbids it. To do so is at most to begin a new war in the cause of another.

But I am supposing that these new allies have some plausible grounds for going to war, and that the Nation has good and just reasons for assisting them; for otherwise an alliance with them just as they are entering upon the war or after they have begun it, would be an evident endeavor to obtain a pretext for evading the treaty, and would be an insidious and faithless violation of it.

§ 42. Why a distinction must be made between a new war and a breach of the treaty.

It is very important to distinguish carefully between a new war and a breach of the treaty of peace, because the rights acquired by the treaty subsist, notwithstanding the new war; whereas they are lost by a breach of the treaty upon which they are based. It is true that during the war the sovereign who granted those rights undoubtedly suspends the exercise of them as far as lies in his power, and may even deprive his enemy of them entirely, just as, by the right of war, he may take any other property from the enemy. But in that case he holds those rights as property captured from the enemy, and the latter can urge the restoration of them by the new treaty of peace. There is a material difference, in negotiations of that character, between requiring the restoration of property possessed before the war and demanding new concessions. Some show of equality in his successes, as compared with those of the enemy, may warrant a sovereign in insisting upon the former; a decided superiority is required to obtain the latter. It often happens that when their victories are about evenly balanced the parties agree to return conquests and to restore all things to their former status; and in that case, if the war is a new one, the former treaties continue in force; but if they have been dissolved by the renewal of the old war, they remain void; and if the parties wish to have them become binding once more, they must expressly stipulate to that effect in the new treaty.

Another important aspect of the present question is that relating to other Nations, not parties to the treaty, but which, from motives of their own, may be interested in having the treaty observed. The distinction between a new war and a dissolution of the treaty is of great importance for the guarantors of a treaty, if there be any, and for the allies of either party, who have to determine the cases in which they are under obligation to furnish help. Finally, the sovereign who violates a solemn treaty is much more to be condemned than one who asserts an ill-founded claim and supports it by force of arms. The former adds to his injustice the crime of perfidy; he strikes at the foundations of public security; and in thereby injuring all Nations, he justifies them in uniting together to suppress him. Hence, on the ground that we should hesitate to impute the more disgraceful charge, Grotius justly observes that when the case is doubtful, and when some plausible pretext of a new cause for war can be found to support the resort to arms, “it is better to find the sovereign who goes to war a second time guilty of simple injustice, unaccompanied by perfidy, than to consider him as guilty at once of faithlessness and injustice.(*a*)

(*a*) Lib. III, Cap. XX, § 28.

§ 43. Justifiable self-defense is not a breach of the treaty.

Justifiable self-defense is not a breach of the treaty. It is a natural right, which a Nation can not renounce; and in promising to live at peace the Nation merely promises not to attack the other party without cause, and to refrain from doing any act of violence or injustice. But there are two ways in which a Nation may defend itself or its property. On some occasions a direct attack can be met only by a like resistance, and in that case the use of force is entirely lawful; on other occasions there are more pacific means of obtaining redress for the injury inflicted, and these latter means are always preferable to the use of force. Such is the rule of conduct that two Nations, which are desirous to maintain peace, should pursue when the subjects of either Nation happen to give way to any act of violence. A direct attack is met at the time and checked by the use of force; but if there is question of seeking the redress of an injury and due satisfaction, the injured State must apply to the sovereign of the guilty persons, and it can not pursue them into his territory, or have recourse to arms, unless he has refused to do justice to it. If there is reason to fear that the offenders will escape, if, for example, certain unknown persons from a neighboring country make an inroad into our territory, we are justified in pursuing them with an armed force into their own country until they are captured; and their sovereign should regard our action as only just and lawful self-defense, provided we commit no act of hostility against innocent persons.

§ 44. Breach of treaty by acts committed against allies.

When one of the principal contracting parties has included his allies in the treaty, their cause becomes in that respect common with his, and they should enjoy with him the benefit of all the essential conditions of the treaty, so that any act which, if committed against him, would constitute a violation of the treaty, is equally so if committed against the allies whom he has included in the treaty. If the injury is done to a new ally, or one not included in the treaty, it may properly furnish a new cause for war, but it is not a breach of the treaty of peace.

§ 45. Secondly: A treaty is violated by acts inconsistent with the nature of that particular treaty.

The second manner in which a treaty of peace may be violated is by acts inconsistent with the nature of the particular treaty in question. Thus any conduct incompatible with friendly relations is a breach of a treaty of peace made on the express condition that the parties are to live thenceforth upon terms of friendship. To favor the enemies of a Nation, to treat its subjects harshly, to place unnecessary restrictions upon its commerce, to discriminate unreasonably against it, to refuse to sell it provisions when they can be spared, to protect its seditious or rebellious subjects and to give them asylum, are all acts clearly incompatible with friendly relations. To these may be added, according to circumstances, the following: to construct fortresses upon the frontiers of a State, to show a distrust of it, to enlist troops without being willing to make known the motives for raising them, etc. But to offer an asylum to exiles, to receive subjects who desire to leave their country, not with the intent to hurt it thereby, but solely for their own private advantage; to offer a charitable refuge to emigrants who leave their country to obtain liberty of conscience, are none of them acts inconsistent with the character of a friend. The private rules of friendship do not dispense us, according to the whim of our friends, with the common duties of humanity which we owe to the rest of men.

§ 46. Thirdly: By the violation of some provision of the treaty.

Finally, a treaty of peace is broken by a violation of one of its express provisions. This third way in which it may be broken is the most definite, and offers the least opportunity for evasions and duplicity. Whoever fails to abide by his agreements annuls the contract as far as is in his power; of that there can be no doubt.

§ 47. The violation of a single article annuls the whole treaty.

But the question is asked whether the violation of a single article can effect the dissolution of the entire treaty. Some writers(a) make a distinction here between articles which are connected together (*connexi*), and those which are separate and distinct in character (*diversi*), and they maintain that if one of the latter be violated the treaty continues in force with respect to the rest. But the contrary opinion of Grotius seems to me clearly based upon the nature of treaties of peace and the spirit in which they are concluded. That great writer says that "all the articles of a single treaty are included each in the others, each being a condition on which the rest are accepted, as if the parties formally agreed, 'I will do this thing, provided you on your side do that.'"(*a*) And he adds with good reason that "when the parties desire that the agreement shall not be thereby annulled, they add the express clause that, even though one of the articles of the treaty should happen to be violated the others shall nevertheless continue in force." Such an agreement can undoubtedly be made. The parties may even agree that the violation of an article shall not nullify those which offset it, and are, as it were, an equivalent for it. But if the treaty of peace does not contain that express clause, the violation of a single article annuls the whole treaty, as we have proved above, when speaking of treaties in general (Book II, § 202).

(a) See Wolf, *Jus Gent.*, §§ 1022, 1023.

§ 48. Whether a distinction can be made in this matter between the more and the less important articles.

It is equally idle to attempt to distinguish in this matter between articles of greater and those of less importance. In strict justice a violation of the smallest article dispenses the injured party from observing the other articles, since, as we have just said, they are all bound together, as if each were a condition of the acceptance of the others. Besides, what endless disputes would arise from the application of such a distinction! Who is to decide upon the importance of the article violated? But it is certainly true that it is by no means in accord with the mutual duties of Nations, and with the charity and love of peace which should animate them, to be always ready to annul a treaty upon the smallest ground of complaint.

§ 49. Penalties attached to the violation of an article.

In order to prevent such unfortunate consequences, the parties act wisely in agreeing upon a penalty to be attached to the violation of one of the less important articles of the treaty; and in that case, if the offender submits to the penalty, the treaty continues in full force. In like manner the parties may attach to the violation of each article a penalty proportionate to its importance. We have treated of this point in speaking of truces (Book III, § 243), and we refer the reader to our remarks in that connection.

§ 50. Deliberate delays.

Deliberate delays are equivalent to an express refusal to carry out the agreement, and they only differ from it in that the person resorting to them seeks to cover his bad faith by dissimulation; he adds deceit to perfidy and actually violates the article which he should carry out.

§ 51. Insurmountable obstacles.

But if fulfillment is prevented by a real obstacle, additional time must be given; since no one is held to do what is impossible. For the same reason, if an insurmountable obstacle renders the fulfillment of an article not only impracticable for the present, but impossible at any future time, no blame is to be attributed to the failure on the part of the promisor; and the promisee can not take occasion therefrom to annul the treaty, but should accept an indemnity, if the case calls for it and circumstances permit it. However, if the act which should have been done by virtue of the article in question is of such a nature that it is clear that the treaty was concluded in view of that act, and not of an equivalent, the treaty is without doubt annulled by the impossibility of performing the act. Thus, a treaty of protection is dissolved when the protector finds himself unable to afford the promised protection, although his inability may be due to no fault on his part. Likewise, a sovereign is released from any promises he may have made on condition that the promisee obtain for him the restitution of an important town, when the latter proves unable to put him in possession. Such is the invariable rule of justice. But strict justice should not always be insisted upon; peace is so advantageous to

---

(*a*) Lib. III, Cap. XIX, § 14.

Nations, and they are so strictly under obligation to cultivate it, and to procure the return of it when it has been lost by war, that when obstacles, such as those above mentioned, are met with in the execution of a treaty of peace, the parties should lend themselves in good faith to all reasonable expedients, and should accept an equivalent, or a compensation, for the act which can not be performed, rather than annul a treaty of peace and renew the war.

§ 52. Acts of subjects in violation of the treaty of peace.

We have considered above, in a special chapter (Book II, Chap. VI), under what circumstances and on what occasions the acts of subjects can be imputed to the sovereign and to the Nation. The principles there set forth must be used in determining when the acts of subjects can bring about the annulment of the treaty of peace—an effect which they can only produce in so far as they are attributable to the sovereign. A prince who is injured by the subjects of another sovereign obtains redress for himself when he captures the offenders in his own territory or in places not under the jurisdiction of any State, as, for example, on the high seas; or, if he prefers, he may apply to their sovereign for satisfaction. If the offenders are rebellious subjects, no redress can be obtained from their sovereign; but whoever happens to capture them, even in places not under the jurisdiction of any State, executes justice upon them himself. Such is the method of dealing with pirates. And in order to avoid all difficulty in the matter, it is generally agreed that the same treatment shall be shown to all private persons who commit acts of hostility without being able to show a commission from their sovereign.

§ 53. Or of allies.

The acts of the allies of a State can be imputed to it even less than the acts of its subjects. Accordingly the violation of a treaty of peace on the part of allied sovereigns, even on the part of those who are included in the treaty, or who have taken part in it as principal contracting parties, can not effect a rescission of it, except with regard to themselves, and does not alter the position of their ally, who, on his part, faithfully abides by his engagements. The treaty continues in full force as far as he is concerned, provided he does not undertake to support the cause of his perfidious allies. Since he is not under obligation to help them under such circumstances, should he do so he thereby adopts their cause and shares in their breach of faith. But if he has an interest in preventing them from being overwhelmed, he may intervene, and by forcing them to make full and suitable reparation, may protect them from a tyranny which would react upon himself. He is even justified in defending them against an implacable enemy who will not be content with just satisfaction.

§ 54. Rights of the injured party against one who has violated a treaty.

When a treaty of peace has been violated by one of the contracting parties, the other has the right either to declare the treaty dissolved, or to allow it to continue in force. For the latter can not be bound by a contract, when the former does not respect it, by observing the reciprocal obligations devolving upon him. But if the injured party prefer not to annul it, the treaty remains valid and binding. It would be absurd for the party who has violated the treaty to claim that it has been annulled by his own breach of faith, for if that were true engagements could readily be set aside and treaties would be reduced to empty formalities. If the injured party wishes to allow the treaty to continue in force, he may pardon the violation of it, or may require just satisfaction in the form of an indemnity, or may rescind the stipulations which correspond to the article violated—the promises which he made in consideration of the acts which have not been performed. But if he decides to demand just satisfaction, and the party in fault refuses to give it, then the treaty is dissolved of necessity and the injured party has just cause for renewing the war. Indeed, this is what generally happens; for it rarely happens that the guilty party is willing to acknowledge his fault by making redress.

CHAPTER V.

The Right of Maintaining Embassies, or the Right of Sending and Receiving Public Ministers.

§ 55. It is necessary that nations be able to negotiate and have intercourse with one another.

Nations must necessarily treat and have intercourse with one another in order to advance their interests, to avoid injuring one another, and to adjust and terminate their disputes. And since they are all under the indispensable obligation of uniting their efforts to promote their common welfare and safety (Introd., § 13), and of arranging for themselves a means of settling and terminating their disputes (Book II, §§ 323, and foll.), and since each has the right to whatever is required for its self-preservation (Book I, § 18) and to whatever can contribute to its advancement without causing injury to the others (*ibid.*, § 23), as also to the means necessary to fulfill its duties, it follows from the above reasons that each Nation possesses both the right to negotiate and have intercourse with the others, and the reciprocal obligation to lend itself to such intercourse as far as circumstances will permit it to do so.

§ 56. They do so through the agency of public ministers.

But Nations or sovereign States do not treat with one another directly as corporate entities; nor can their rulers or sovereigns readily meet one another personally in order to negotiate their affairs. Such interviews would be frequently impracticable; and apart from the delays, the trouble, the expense, and other inconveniences attending them, rarely, according to the remark of Philippe de Commines, could any good effect be expected from them. Consequently, Nations and sovereigns have no other means of communicating and treating with one another than through the mediation of agents or representatives, of delegates charged with their orders and vested with their powers, that is to say, through the mediation of *public ministers.* This expression, in its most general sense, is used of every person intrusted with the management of public affairs, but it is particularly applied to those who are appointed to fulfill such duties at a foreign court.

Several grades of public ministers are recognized at the present day, and we shall refer to them later. But whatever distinctions custom may have introduced among them, they all possess the same essential character, namely, that of an agent, and, to some extent, that of a representative of a foreign sovereign—a person appointed to manage his affairs and to carry out his orders; and that character is sufficient for our present purpose.

§ 57. Every sovereign state has the right to send and to receive public ministers.

Every sovereign State has, therefore, the right to send and to receive public ministers. For they are the necessary agents in the negotiation of the affairs which sovereigns have with one another, and in the maintenance of the intercourse which sovereigns have the right to keep up. In the first chapter of this work we have explained who are the sovereigns and which the independent States that are members of the great society of Nations; it is those powers which have the right of embassy.

§ 58. Neither an unequal alliance nor a treaty of protection deprives a state of this right.

Since unequal alliances, and even treaties of protection, are not incompatible with sovereignty (Book I, §§ 5, 6), treaties of that kind do not of themselves deprive a State of the right of sending and receiving public ministers. If the inferior ally or the protected State has not expressly given up the right to maintain relations and to treat with other powers, it necessarily retains the right to send ministers to them and to receive ministers from them. The same is to be said of such vassal and tributary States as still retain their sovereignty (Book I, §§ 7, 8).

§ 59. The right of princes and states of the empire in this matter.

Further still, the right of maintaining an embassy may belong even to princes or to communities not possessed of sovereign power, for the rights which together constitute full sovereignty are not indivisible; and if by the constitution of the State, by a grant from the sovereign, or by reservations which the subjects have made with their sovereign, a prince or a community happens to be possessed of any one of those rights which ordinarily belong to the sovereign alone, they may exercise it and enforce it in all its effects and in all its natural or necessary consequences, unless formal exception has been made of them. Although the Princes and States of the Empire are dependent upon the Emperor and the Empire, they are sovereign in many respects; and since the constitutions of the Empire secure to them the right to negotiate and to contract alliances with foreign powers, they have unquestionably the right to send and to receive public ministers. The Emperors, when in a position to assert their claims, have sometimes contested this right, or at least have sought to subject the exercise of it to their supreme authority by insisting that their permission should be obtained as a condition of its enjoyment. But since the peace of Westphalia, as a result of the imperial capitulations, the Princes and States of Germany have been able to maintain themselves in the possession of that right; and they have secured to themselves so many other rights that the Empire is at the present day regarded as a republic of sovereigns.

§ 60. Cities possessing the droit de bannière.

There are even cities which, though under the sovereignty of a State and acknowledging their position as such, yet have the right to receive the ministers of foreign powers and to send representatives to them, since they have the right to negotiate with those powers. It is on this latter point that the whole question turns; for he who has a right to an end has a right to the means of attaining it. It would be absurd to recognize the right to negotiate and to deny the necessary means of exercising it. The cities of Switzerland, such as Neufchatel and Bienne, which possess the *droit de bannière*, have, in consequence, the right to treat with foreign powers, although those cities are under the sovereignty of a prince. For the droit de bannière, or the right to maintain an independent army, includes the right to furnish auxiliary troops,(*a*) provided they are not to be used against the prince. If those cities may furnish troops, they may receive requests for them from foreign powers, and may arrange the terms on which they shall be furnished. Hence, they may send an agent to conduct negotiations with those powers, or they may receive ministers from them. And as they have at the same time the administration of their own domestic police, they are in a position to cause the foreign ministers who come to them to be respected. What we have here said of the rights of those cities is confirmed by ancient and regular practice. However remarkable and extraordinary such rights may be, they will not be found strange if it be remembered that these same cities already possessed great privileges at the time when their princes depended themselves upon the Emperors, or upon other lords who were direct vassals of the Empire. When these princes shook off the yoke of vassalage and won for themselves a position of perfect independence, the larger cities of their territories made terms with them; and far from permitting their situation to become worse, the cities very naturally profited by the opportunity to secure for themselves greater freedom and prosperity. The princes can not now protest against the terms upon which the cities agreed to throw in their lot with them and acknowledge them as their only lords.

§ 61. Ministers of viceroys.

The viceroys or head governors of a State or of a distant province have frequently the right to send and to receive public ministers. In doing so they act in the name and by the authority of the sovereign whom they represent and whose

---

(*a*) See *L'Histoire de la Confédération Helvétique*, by de Watteville.

rights they are exercising. Their powers in this respect depend entirely upon the will of the sovereign who appoints them. The viceroys of Naples, the governors of Milan, and the governors-general of the Netherlands, appointed by Spain, were invested with that power.

§ 62. Ministers sent during an interregnum by the nation itself or by regents.

The right of embassy, like all the other rights of sovereignty, resides ultimately in the Nation as its principal and original possessor. During an interregnum the exercise of this right falls back upon the Nation or devolves upon those who are appointed by the laws as regents. They may send ministers, just as the sovereign was in the habit of doing, and these ministers have the same rights as those appointed by the sovereign. When the throne is vacant the Republic of Poland sends ambassadors, and it would not suffer less respect to be shown them than is shown to those which it sends when it has a King. Cromwell was able to obtain for the ambassadors appointed by him the same respect which they enjoyed when England was a monarchy.

§ 63. A sovereign who hinders another in the exercise of the right of embassy.

Such being the rights of Nations, the sovereign who undertakes to prevent another sovereign from sending and receiving public ministers does him an injury and violates the Law of Nations; for in doing so he attacks the Nation in one of its most valuable rights—a right which nature itself has given to every independent society; he breaks the bonds which unite Nations together, and thereby does an injury to all of them.

§ 64. What is permitted in this respect in time of war.

But this is to be understood only of a time of peace. War gives rise to other rights. It allows us to deprive the enemy of all his resources and thus to prevent him from sending his ministers to solicit aid. There are even occasions when we may refuse to allow the ministers of neutral Nations to pass through our territory on their way to our enemy. We are not obliged to give them an opportunity of carrying, it may be, valuable information, or of planning with the enemy some way of giving him help, etc. There is no doubt on this point in the case, for example, of a besieged town. No right can authorize the minister of a neutral power, nor any other person whatsoever, to enter the town without the besieger's consent. But in order to avoid giving offense to sovereigns, good reasons must be given for a refusal to allow their ministers to pass through the territory; and those sovereigns, if they mean to remain neutral, must be satisfied with the reasons given. The privilege of passage is sometimes refused to ministers who are under suspicion at a time when the relations of two States are in a strained and uncertain condition, although they have not reached the point of open war. But the step is a delicate one, and if it is not justified by perfectly satisfactory reasons it produces a bitterness of feeling which may easily result in an open rupture.

§ 65. The minister of a friendly power should be received.

Since Nations are obliged to have intercourse with one another, to listen to the proposals and requests that are made to them, and to keep up a ready and secure means of meeting in conference and adjusting their differences, a sovereign can not, without urgent reasons, refuse to admit and give audience to the minister of a friendly power or of a power with which he is at peace. But if he has reasons for not receiving him into the interior of the country, he may appoint a place upon the frontier where the minister will be met and his proposals heard. The minister must stop at the appointed place; it is sufficient that he be given a hearing, and that is the extent of his right.

§ 66. Resident ministers.

The obligation of mutual intercourse does not go so far as to require Nations to allow at all times foreign ministers to reside permanently at the sovereign's court when they have no business to negotiate with him. It is natural, indeed, and in entire accord with the proper attitude of one Nation to another, to give a friendly reception to such resident ministers when there is nothing to fear from their stay. But if there is any sound reason against doing so the welfare of the State unquestionably takes precedence; and the foreign sovereign can not take it amiss if his minister is requested to withdraw when the latter has finished the business for which he came or has none at all to transact. The custom of having ministers permanently resident at a court is so well established at the present day that very good reasons must be alleged if, in refusing to follow it, a sovereign would avoid giving offense. These reasons may be based upon special circumstances, but there are also reasons which regularly hold good and which are connected with the character of the government and the constitution of a Nation. Republics would often have very good reasons of this latter kind to dispense them from permitting foreign ministers to remain permanently in residence; for there is danger of those ministers corrupting and winning over the citizens to their sovereigns, to the great detriment of the Republic, and of their forming and encouraging factions, etc. And even though they should do no more than instill in a people formerly simple, frugal, and virtuous, a taste for luxury, a love of riches, and the manners of royal courts, that would be enough to justify a wise and far-sighted ruler in dismissing them. The Polish Nation does not readily admit resident ministers, and the intrigues of the latter with the members of the Diet have furnished only too good reasons for keeping them at a distance. In the year 1666 a delegate complained in the open Diet that the French ambassador was prolonging his stay in Poland without necessity, and said that he should be regarded as a spy. In 1668 other members moved that a law be passed regulating the length of time that ambassadors should be allowed to remain in the Kingdom.(*a*)

§ 67. Under what circumstances the ministers of the enemy should be admitted.

The more terrible are the evils of war, the more are Nations bound to retain some means of putting an end to it. Hence, even in the midst of hostilities they must be able to send ministers to make overtures of peace or to propose measures tending to moderate the horrors of war. It is true that the minister of one belligerent can not come into the country of the other without permission; accordingly a passport or safe-conduct is asked for him, either by a common friend or by one of those messengers who are privileged by the laws of war and of whom we shall speak later; I mean a trumpeter or a drummer. It is also true that the safe-conduct may be refused and the minister denied admittance if there are special and weighty reasons for doing so. But this right, based upon the care which every Nation owes to its safety, does not prevent us from laying down the general principle that a belligerent should not refuse to admit and give a hearing to the minister of an enemy; that is to say, war is not, alone and of itself, a sufficient reason for refusing to listen to any proposition coming from the enemy, but there must be some special and well-founded reason to warrant the refusal. Such a reason would be, for example, a well-grounded fear that an enemy whose conduct has been characterized by deceit has no other design in sending his ministers to make proposals, than to set at variance the members of an alliance, to put them off their guard by exhibiting a pretended desire for peace, and to take them by surprise.

§ 68. Whether ministers may be received from and sent to an usurper.

Before concluding this chapter we must consider a celebrated question that has been much debated. It is asked whether foreign Nations may receive ambassadors or other ministers from an usurper and send theirs to him. In this matter foreign powers look to the sovereign in actual possession, if their interests invite them to do so. There is no safer rule, nor one more in accord with the Law of

---

(*a*) Wicquefort, *L'Ambassadeur et ses fonctions*, Liv. 1, § 1, at the end.

Nations and the independence of States. Since foreigners have no right to interfere in the domestic affairs of a State, they are not obliged to examine and pass upon the justice or injustice of its conduct in the management of them; they may, if they think fit, presume that the sovereign in possession is the lawful one. When a Nation has driven out its sovereign, other powers, which do not wish to declare against it and thereby expose themselves to war with it or arouse its emnity, consider it thenceforth as a free and sovereign State, without taking it upon themselves to judge whether it has acted justly in throwing off the sovereignty of its former prince. Cardinal Mazarin received Lockhart, whom Cromwell sent as ambassador of the Republic of England, and he refused to give audience to either King Charles II or his ministers. If the Nation, after having driven out its prince, subjects itself to another, or if it changes the order of the succession and recognizes a sovereign to the prejudice of the natural and appointed heir, foreign powers are here again justified in regarding what has been done as lawful; the quarrel is no affair of theirs. At the beginning of the last century Charles, Duke of Sudermania, had himself crowned King of Sweden, to the prejudice of his nephew, Sigismund, King of Poland; and he was soon recognized by the majority of sovereigns. Villeroy, minister of Henry IV, King of France, declared plainly to President Jeannin, in a dispatch dated the 8th of April 1608: "All these reasons and considerations will not prevent the King from treating with Charles, if he finds it to his interest and that of his Kingdom to do so." His words were well spoken. The King of France was neither the judge nor the guardian of the Swedish Nation, so as to be warranted in refusing, contrary to the interests of his own Kingdom, to recognize the King which Sweden had chosen, on the ground that a competitor to the throne regarded Charles as an usurper. Even though there were grounds for thinking so, the question was not one for foreigners to decide.

When, therefore, foreign powers have received the ministers of an usurper and have sent theirs to him, the lawful prince, upon recovering his throne, can not complain of the act as an injury, nor make of it a just ground for war, provided those powers have not gone further and given help against him. But to acknowledge the dethroned prince, or his heir, after the State has formally acknowledged the sovereign who has replaced him, is to do an injury to the latter and to manifest an unfriendly attitude towards the Nation which has chosen him. It was a step of this kind, hazarded by France in favor of the son of James II, which William III and the English Nation made one of the principal grounds of the war which was shortly afterward declared against France. Neither the diplomacy nor the protestations of Louis XIV could prevent England from regarding the recognition of the Stuart prince as King of England, Scotland, and Ireland, under the title of James III, as an injury done to the King and to the Nation.

CHAPTER VI.

The Several Grades of Public Ministers; the Representative Character of Ministers; and the Honors which Are Due Them.

§ 69. Origin of the several grades of public ministers.

In former times public ministers were almost always of the same grade, and were called in Latin *legati*, a term which is rendered in French by the word "*ambassadeurs*." But when courts became more ostentatious and at the same time more insistent upon ceremonial, and especially when they undertook to regard the minister as representing even the dignity of his sovereign, it was thought expedient, in order to avoid disputes, trouble, and expense, to employ, on certain occasions, agents of less exalted rank. Louis XI, King of France, was, perhaps, the first to set an example of this. In thus establishing various grades of ministers a proportionate dignity was attached to their character, and corresponding honors demanded for them.

§ 70. The representative character.

Every minister represents to some degree his sovereign, just as every agent represents his principal. But this general position of representative is relative to the business to be negotiated; the minister represents the person in whom resides the rights which he is to look after, maintain, and enforce—the rights concerning which he is to treat in his sovereign's stead. While acting as the representative of his sovereign in general, and as far as the actual business to be transacted is concerned, the minister is not regarded as representing the dignity of his sovereign. Later on, sovereigns desired to be represented not only in their rights and in the conduct of their affairs, but even in their dignity, in the preeminence of their power and position. It was doubtless those brilliant events, the ceremonies attending such an occasion as that of a royal marriage, which ambassadors were sent to attend, that gave rise to this custom. But the exalted rank of the minister interferes greatly with the conduct of business, and often gives rise not only to trouble, but also to difficulties and disputes. The result has been the creation of the several grades of public ministers, representing their sovereign in different degrees. Custom has established three principal grades. The minister who bears what is called preeminently the *representative character* is appointed to represent his sovereign, even as to his very person and dignity.

§ 71. Ambassadors.

A minister bearing the *representative character*, taken thus in its preeminent sense, or in contradistinction to the other degrees of that character, belongs to the first grade, that of *ambassador*. He stands above all other ministers who are not invested with the same character and takes precedence over them. There are, at the present day, *ambassadors ordinary* and *ambassadors extraordinary;* but this is merely an accidental distinction, relative to the object of their mission. However, a somewhat different treatment is almost everywhere accorded to these two classes of ambassadors; but this is a mere matter of custom.

§ 72. Envoys.

Envoys are not invested with the representative character, strictly so called, or in the first degree. They are ministers of the second grade, upon whom their sovereign has conferred a degree of dignity and honor, which, while inferior to that enjoyed by an ambassador, comes immediately after it, and gives place to no other. There are also *envoys ordinary* and *extraordinary*, and it seems that princes intend that the latter shall be held in greater respect; but this again is a matter of custom.

§ 73. Residents.

The term *resident* formerly referred merely to the fact that the minister remained permanently in the country, and history presents instances in which ambassadors ordinary were designated by the simple title of residents. But since the practice of appointing various grades of ministers has become generally established, the name of *resident* had been applied to ministers of a third grade, whose character has come to be generally regarded as attended with a lesser degree of honor. The resident does not represent the sovereign as regards the royal dignity, but merely as regards the business to be transacted. In reality, he represents the sovereign in the same way in which the envoy represents him; so that the resident is often called a minister of the second grade, as is the envoy, thus distinguishing only two grades of public ministers, namely, ambassadors, who bear the representative character preeminently, and all other ministers who are not invested with that eminent character. This is the most necessary distinction, and the only essential one.

§ 74. Ministers.

Finally, an even more recent custom has established a new class of public ministers, whose representative character is not specifically determined. They are called simply *ministers*, to indicate that they are invested with the general capacity of agents of their sovereign, without possessing any special rank or representative character. Here again the formalities of court ceremonial gave rise to this new class. Custom had fixed the special treatment to be shown to an ambassador, an envoy, and a resident; but disputes frequently arose on the subject between the ministers of the different sovereigns, and particularly disputes over the question of rank. In order to avoid all trouble on occasions when there were grounds for anticipating it, the plan was adopted of sending ministers without designating them as belonging to any of the three recognized grades. No prescribed ceremonial was assigned to such ministers, and they could not lay claim to any special treatment. The *minister* represents his sovereign in a vague and undefined manner which falls short of the highest grade, and consequently he readily yields precedence to an ambassador. In general, he should enjoy the respect which belongs to a person in whom his sovereign has manifested confidence by committing to him the care of his affairs; and he possesses all the rights essential to the character of a public minister. The position of the *minister* is so indeterminate that the sovereign can confer it upon those of his servants whom he would not wish to invest with the character of ambassador; and, on the other hand, it can be accepted by a man of rank who would not be satisfied with the position of resident and the treatment accorded to that office at the present day. There are also *ministers plenipotentiary*, whose position is much more honorable than that of simple ministers, but, as in the case of ministers, no particular rank or representative character is assigned to them. Custom, however, appears to prescribe that they shall be ranked immediately after the ambassador, or with the envoy extraordinary.

§ 75. Consuls, agents, deputies, commissioners.

Consuls have been treated of under the head of commerce (Book II, § 34). *Agents* were formerly a class of public ministers; but at the present day, when titles have been multiplied in such profusion, the name *agent* is given to persons who are appointed by sovereigns merely to transact their private affairs. Frequently, indeed, they are citizens of the country in which they reside. They are not public ministers, and consequently are not under the protection of the Law of Nations. But out of deference to the prince whom they serve a more special protection is due them than is given to other foreigners or citizens, and a certain respect is shown them. If the prince sends an *agent* bearing letters of credence and appointed to transact public business, the agent is thereby constituted a public minister, whatever be his title. The same is to be said of deputies, commissioners, and others intrusted with negotiation of public affairs.

§ 76. Letters of credence.

Among the various grades of the representative character the sovereign is at liberty to choose the one with which he will invest his minister; the grade of the minister is set forth in the *letters of credence* which are given to him by his sovereign, to be delivered to the sovereign to whom he is sent. *Letters of credence* are formal evidence that the minister bearing them has been duly appointed to represent his sovereign with the prince to whom he is sent. If this prince receives the minister he must receive him in the capacity conferred upon him by his letters of credence. They are, as it were, his general power of attorney, his *formal commission* (*mandatum manifestum*).

§ 77. Instructions.

The *instructions* given to a minister contain the *secret commission* of the sovereign, the orders to which the minister must be careful to conform, and which limit his powers. Here are applicable all the rules of the natural law with respect to the acts of representatives or agents, whether the acts are done under open or secret orders. But apart from the fact that those rules relate more particularly to the subject of treaties, we may be all the more excused from entering upon such details in this work, because, owing to a wisely established custom, the agreements which ministers may enter into have no binding force unless ratified by the sovereigns for whom they are acting.

§ 78. The right to send ambassadors.

We have seen in the preceding chapter that every sovereign, and even every community or individual, who has the right to treat of public affairs with foreign powers, has likewise the right to send public ministers. There is no difficulty as regards simple ministers or agents considered in general as intrusted with the affairs and invested with the powers of those in whose right they are treating. Further, no difficulty is made over according to the ministers of all sovereigns the rights and prerogatives of ministers of the second grade. But great monarchs refuse to some small States the right to send ambassadors. Let us see if their action is justifiable. According to the generally received custom, an ambassador is a public minister, who represents the person and the dignity of his sovereign; and since his representative character obtains for him special honors, great princes are unwilling to receive an ambassador from a small State, not caring to show him such marks of distinction. But it is clear that every sovereign has an equal right to be represented by an agent of the first grade as well as by one of the second or third; and in the society of Nations the dignity of a sovereign is deserving of marked respect. We have shown (Book II, Chap. III) that the dignity of independent Nations is essentially the same; that a weak prince, if sovereign, is as much sovereign and independent as the greatest monarch, just as a dwarf is as much a man as is a giant; although, in truth, the political giant is a much more important personage in the society of Nations than the dwarf, and consequently obtains more respect and more elaborate honors. It is evident, therefore, that every truly sovereign prince or State has the right to send ambassadors, and that to dispute that right is to do a great injury to the prince or State—it is equivalent to an attack upon the sovereignty of the prince or State in question. And if the prince has that right, his ambassadors can not be refused the respect and honor which custom has particularly prescribed for one who represents the person of a sovereign. The King of France does not receive ambassadors from the Princes of Germany, thus refusing to their ministers the honors assigned to representatives of the first grade; yet he receives ambassadors from the princes of Italy. In justification for this diversity of treatment he alleges that the latter are more completely sovereign than the former, because, though both are vassals, the princes of Italy do not depend to the same extent upon the authority of the Emperor and the Empire. The Emperors, however, claim the same rights over the princes of Italy as over those of Germany. But France, seeing that the latter are not incorporated with Germany and do not assist at the Diets, detaches them as far as it can from the Empire by favoring their absolute independence.

§ 79. The honors which are due to ambassadors.

I shall not enter here into details respecting the honors which are due and which are in fact shown to ambassadors, for that is a matter entirely dependent upon custom and prescribed regulations. I shall only note, in general, that those marks of honor and respect are due them which usage and established practice have fixed as appropriate to the representative of a sovereign. And it must be observed here with respect to matters of usage and prescribed practice, that when a formality has become so settled that it gives a real value to things indifferent in themselves, and a recognized meaning to them, the natural and necessary Law of Nations obliges us to respect that formality and to act in regard to those things just as if they really possessed the importance which men attach to them. For example, according to the general custom of Europe it is the peculiar prerogative of an ambassador to remain with his head covered in the presence of the prince to whom he is sent; and the right thus conferred upon him is an indication that he is acknowledged as the representative of a sovereign. Consequently, to refuse this right to the ambassador of a truly independent State is to do an injury to that State, and in some measure to dishonor it. The Swiss, who were formerly more skilled in the art of war than in the etiquette of courts, and who had little concern for matters of mere ceremony, have allowed themselves to be treated on certain occasions in a manner little befitting the dignity of their Nation. In 1663 their ambassadors permitted the King of France and the nobles of his court to deny them the honors which were properly due to the ambassadors of sovereigns, and particularly that of remaining with their heads covered during their audience with the King.(*a*) Some of the ambassadors who had a better sense of what they owed to the honor of their Republic insisted strongly upon that essential and distinctive honor; but the opinion of the majority prevailed, and they all finally yielded upon being assured that the ambassadors of their Nation had not remained covered in the presence of Henry IV. Granted that such was the fact, the argument was not unanswerable. The Swiss might have rejoined that in the time of Henry IV their Nation had not been formally recognized as free and independent of the Empire, as it later came to be by the Treaty of Westphalia, in 1648. They might have said that if their predecessors had failed to maintain duly the dignity of the State, that serious error could not impose upon them as successors the obligation of committing a like one. At the present day, when the Swiss Nation has a more enlightened sense of what is proper in these matters, and is more attentive to them, it will be more careful to maintain its dignity; all the extraordinary honors which may be shown in other respects to its ambassadors will not blind it henceforth so far as to let it overlook that mark of honor which custom has rendered essential. When Louis XV came to Alsace in 1744, the Swiss were unwilling to send ambassadors to greet him according to custom, until informed whether the ambassadors would be allowed to keep their heads covered; and when that just request was refused, no ambassadors were sent. It is the hope of the Swiss that His Most Christian Majesty will no longer insist upon a claim which adds nothing to the honor of his crown, and which can only serve to humiliate his old and faithful allies.

(*a*) The details of what happened on that occasion can be found in Wicquefort's treatise. The author is justified in expressing a certain amount of indignation at the conduct of the Swiss ambassadors. But he should not have insulted the whole Nation by harshly asserting that they "prefer money to honor." (*L'Ambassadeur et ses fonctions*, Liv. 1, § 19. See, also, § 18.)

CHAPTER VII.

The Rights, Privileges, and Immunities of Ambassadors and Other Public Ministers.

§ 80. Respect due to public ministers.

The respect which is due to sovereigns should reflect upon their representatives, and particularly upon an ambassador, as representing the person of his master in the highest degree. He who offends and insults a public minister commits a crime all the more worthy of severe punishment, in that he may be the means of involving his sovereign and his country in serious difficulties. It is just that he should be duly punished, and that the State should make, at his expense, full satisfaction to the sovereign who has been offended in the person of his minister. If the foreign minister himself offends a citizen, the latter may resist the attack, without failing in the respect due to the character of the minister as a representative, and may give the minister such a lesson as shall both avenge the offense and put the author of it to shame. The injured person may also carry his complaint to his sovereign, who will demand of the sovereign of the minister due redress for the injury. The interests of the State do not permit a citizen on such occasions to be influenced by ideas of vengeance which the code of honor might suggest, although in other respects those ideas might be considered permissible. Even according to the maxims of the age, a gentleman is not dishonored by an injury for which it is not in his power to obtain satisfaction personally.

§ 81. Their person is sacred and inviolable.

Once the necessity and the right of maintaining embassies has been demonstrated (see Chap. V of this Book), it follows conclusively that ambassadors and other ministers should be put in a position of perfect safety and inviolability; for if their person is not protected from violence of every kind, the right of maintaining embassies becomes of doubtful value and can hardly be exercised with success. The right to an end carries with it the right to the necessary means. Consequently, since embassies are of such great importance in the universal society of Nations, and are so necessary to their common welfare, the person of the ministers appointed to them should be *sacred* and *inviolable* among all Nations (see Book II, § 218). Whoever does violence to an ambassador or to any other public minister not only does an injury to the sovereign whom the minister represents, but he attacks the common safety and welfare of all Nations and renders himself guilty of a grievous crime against all Nations.

§ 82. Special protection due to them.

It is particularly the duty of the sovereign to whom a minister is sent to afford security to the person of the minister. To receive a minister in his representative capacity is equivalent to promising to give him the most particular protection and to see that he enjoys all possible safety. It is true that the sovereign should protect every man who happens to be in his States, whether citizen or alien, and keep him secure from all violence; but this care is due in a higher degree to a foreign minister. An act of violence towards an individual is an ordinary crime which a prince may pardon according to circumstances; but if it is committed against a public minister it becomes a crime of State and an offense against the Law of Nations, and the right to pardon it no longer rests with the prince in whose dominions it has been committed, but belongs to the sovereign who has been offended in the person of his minister. However, if the minister has been insulted by persons who were unaware of his official position, the offense does not concern the Law of Nations, but falls back into the class of ordinary misdemeanors. Certain young libertines in a Swiss town insulted one night the residence of the British minister, without knowing who lived there. When the magistrate asked the minister what redress he desired, the latter wisely replied that it was for the magistrate to provide for the public safety by appropriate means, but that as for himself in particular he had no desire for redress, because he did not consider himself insulted by persons who could not have intended to offend him, since they did not know that the house was his. A further point in the special protection due to foreign ministers is that whereas, according to the pernicious principles introduced by a false sense of honor, a sovereign is under the necessity of showing indulgence towards a person wearing a sword when the latter promptly avenges an insult offered by a private citizen, such personal revenge is not permissible or excusable as against a public minister, except in the case where the minister is the aggressor and puts the other under the necessity of self-defense.

§ 83. When it should begin to be shown.

Although the representative character is not borne by the minister to the fullest extent, and thus does not secure him the enjoyment of all his rights, until the minister has been acknowledged and received by the sovereign to whom he delivers his letters of credence, nevertheless, as soon as he has entered the country to which he is sent, and has made himself known, he is under the protection of the Law of Nations; otherwise it would not be safe for him to come. Until his presentation to the sovereign, the minister's word should be taken as to his character. Moreover, in addition to the information as to his identity, furnished by letters, if there is any reason for doubt, the passports borne by the minister are sufficient evidence of his character.

§ 84. What is due to ministers in countries through which they pass.

These passports become at times necessary when a minister is passing through a foreign country on the way to the country of his destination. He exhibits them, when the need arises, in order to obtain the privileges which are due him. It is true that only the prince to whom the minister is sent is under obligation and special agreement to see that the minister enjoys all the rights attached to his character; but other sovereigns through whose territory he passes may not refuse him the respect which is due to the minister of a sovereign and which Nations mutually owe to one another. Above all, they should give him the fullest protection. To insult him would be to offend his sovereign and his entire Nation; to seize him and do violence to him would be a violation of the right of maintaining embassies, which belongs to all sovereigns (§§ 57, 63). Francis I, King of France, had, therefore, good reason to complain of the assassination of his ambassadors, Rincon and Frégose, as a grievous violation of public faith and of the Law of Nations. Those two ministers, destined, the one for Constantinople, the other for Venice, having embarked upon the Po, were seized and murdered, according to all appearances, by the orders of the governor of Milan.(*a*) The Emperor Charles V, by not taking the trouble to seek out the perpetrators of the deed, gave ground for the belief that he had commanded it, or at least that he secretly approved of it after its commission. And as he did not make due satisfaction, Frances I had just grounds for declaring war against him, and even for asking the assistance of all Nations. For an affair of this kind is not a mere dispute between individual States, a debatable question, in which each party is allowed the presumption of being in the right; it is a quarrel in which all Nations are involved, in so far as they have an interest in maintaining the

---

(*a*) *Mémoires de Martin du Bellay*, Liv. IX.

inviolability both of their right to communicate with one another and to negotiate their affairs, and of the means to that end. If a mere private citizen must be allowed an innocent passage through the country, and must even be given the fullest protection, with much greater reason must the same treatment be accorded to a minister who is on his way to execute the orders of his sovereign and to negotiate the affairs of a Nation. I say "an innocent passage," for if the minister's mission is justly open to suspicion, if the sovereign of the country has reason to fear that the minister will abuse the permission to enter it by plotting against him while there, or by conveying information to his enemies and inciting new enemies to attack him, we have already said (§ 64) that the sovereign may refuse to allow the minister to pass through. But he should not maltreat him, nor permit any violence to be offered to his person. If he has not sufficiently strong reasons for refusing him a passage, he may, in granting it, take precautions against any misuse which the minister may make of it. The Spaniards found these principles in practice in Mexico and the neighboring provinces; ambassadors were respected throughout their entire journey, but they could not deviate from the high roads without losing their rights.(*a*) The condition was wisely laid down, its object being to prevent the sending of spies under the name of ambassadors. In like manner, when the famous Congress of Westphalia, amid the dangers of war and the noise of battle, was carrying on the negotiations for peace, the couriers whom the plenipotentiaries sent and received had their route marked out for them, and if they departed from it their passports could give them no protection.(*b*)

§ 85. Ambassadors passing through enemy territory.

What has just been said refers to Nations which are at peace with one another. When a sovereign is at war, he is no longer under obligation to allow to the hostile State the free enjoyment of its rights; on the contrary, he is justified in depriving the State of them, in order to weaken it and force it to accept just terms. He may also attack and seize its citizens wherever he is at liberty to commit acts of hostility. Accordingly he may not only justly refuse passage to ministers whom the enemy State is sending to other sovereigns, but he may seize them if they attempt to pass secretly and without permission through the territory under his control. A signal example of this took place in the late war. A French ambassador on his way to Berlin passed, by the imprudence of his guides, through a village of the Electorate of Hanover, whose sovereign, the King of England, was at war with France. The minister was seized and afterwards taken over to England. Neither the court of France nor that of Prussia complained of His Britannic Majesty, since he had done no more than exercise the rights of war.

§ 86. Diplomatic intercourse between enemies.

The reasons which make embassies necessary and the persons of ambassadors sacred and inviolable have no less force in time of war than in time of peace. On the contrary, the necessity and the indispensable duty which belligerents are under of preserving some means by which they may come to an understanding and re-establish peaceful relations, is an additional reason why the persons of the ministers, who are the agents in the conferences to effect a reconciliation, should be even more sacred and inviolable. *Nomen legati*, says Cicero, *ejusmodi esse debet, quod non modo inter sociorum jura, sed etiam inter hostium tela incolume versetur.*(*c*) Accordingly, it is one of the most sacred laws of war that protection shall be given to those who carry messages or proposals from the enemy. It is true that the ambassador of an enemy can not approach without permission, and as there would not always be an opportunity of requesting such permission through the medium of neutral

---

(*a*) Solis, Histoire de la Conquête du Mexique.
(*b*) Wicquefort, L'Ambassadeur, Liv. 1, § 17.
(*c*) *In Verrem*, Lib. 1.

persons, the lack of an intermediary has been supplied by an agreement that there shall be certain privileged messengers who may carry proposals from one belligerent to the other in perfect safety.

§ 87. Heralds, trumpeters, and drummers.

I refer to heralds, trumpeters, and drummers, who, as soon as they make themselves known, and as long as they keep within the duties which they are commissioned to perform, are, by the rules of war and by the Law of Nations, regarded as sacred and inviolable. This rule must necessarily be observed; for apart from the argument just advanced, that the belligerents must preserve some means by which peace may be restored, there are during the actual course of the war numerous occasions when the mutual welfare and safety of both parties require that they should be able to send messages and proposals to each other. The *fetials* of the Romans were succeeded by *heralds*, but at the present day the latter are no longer employed, and *drummers* or *trumpeters* are sent, as also, when the occasion calls for it, ministers, or officers invested with the requisite powers. The persons of these drummers and trumpeters are sacred and inviolable, but they should make themselves known by the marks characteristic of them. Maurice, Prince of Orange, resented strongly the action of the garrison of Ysendick in firing upon his trumpeter.(*a*) He declared on that occasion that no punishment could be too severe for those who violate the Law of Nations. Other examples can be found in Wicquefort's treatise, and in particular the case in which the Duke of Savoy, commander of the army of Charles V, ordered that redress should be made to a French trumpeter who had been unhorsed and robbed by some German soldiers.(*a*)

§ 88. Ministers, trumpeters, etc., should be respected even in civil war.

In the wars of the Netherlands, the Duke of Alva caused a trumpeter of the Prince of Orange to be hanged, saying that he was under no obligation to protect a trumpeter sent to him by the head of the rebels.(*b*) That bloody general undoubtedly violated on that occasion, as on many others, the laws of war, which, as we have shown above (Book III, Chap. XVIII), should be observed even in civil war. In truth, how can overtures of peace be made on those unhappy occasions, and by what means can a satisfactory settlement be reached, if the two belligerents can not send messages and mutually dispatch confidential agents in perfect safety? The same Duke of Alva, in the war which Spain later waged against the Portuguese, who were likewise treated as rebels, caused the governor of Cascaïs to be hanged, because the governor had fired upon a trumpeter who came to demand the surrender of the town.(*b*) In a civil war, or when a prince takes up arms to subject a body of the people who believe themselves absolved from their allegiance, to attempt to force the enemy to observe the laws of war, when the prince himself refuses to be bound by them, is to seek to carry such a war to the last extreme of cruelty, and to make it degenerate into a lawless and unrestrained massacre, by a continuous series of mutual reprisals.

§ 89. They may sometimes be refused a hearing.

But just as a prince may, if he has good grounds for doing so, refuse to receive and accord a hearing to ambassadors, so the general of an army, or any other commander, is not always obliged to allow a trumpeter or a drummer to approach with his message. For example, if the governor of a town fears that a summons to surrender will alarm the garrison and excite ideas of capitulation before the situation demands it, he may undoubtedly send someone to prevent his approach, and may order him to withdraw, and announce that if he comes again on the same errand and without permission he will fire upon him. Such conduct is not in violation of the laws of war, but it should only be resorted to upon urgent grounds, because, by irritating the enemy, it exposes the garrison to be treated with extreme rigor and to

---

(*a*) Wicquefort, Liv. 1, § 3.

(*b*) *Idem, ibid.*

be shown no mercy. To refuse to hear a trumpeter without giving good reason for the refusal is an announcement on the part of the belligerent that he intends to wage war to the death.

§ 90. All appearence of insult towards them must be avoided.

Whether heralds or trumpeters are received or are refused a hearing, all appearance of insult in dealing with them must be avoided. Not only is such treatment due them by the Law of Nations, but it is also a point of prudence. In 1744 the Bailly de Givry sent a trumpeter with an officer to demand the surrender of the redoubt of Pierre-longe in Piedmont. The Savoyard officer who commanded the redoubt, a brave man, but of a quick and fiery disposition, was indignant that he should be called upon to surrender a post which he believed defensible, and sent back an insulting answer to the French general. The officer, a man of discernment, delivered the answer to the Bailly de Givry in the presence of the French troops; they were inflamed with anger at it, and their eagerness to avenge the insult, joined to their natural bravery, made them irresistible. The losses which they suffered in a bloody attack only roused them the more, and they finally carried the redoubt. Thus the indiscretion of the commander contributed to his own death and that of his soldiers and to the loss of his post.

§ 91. By whom and to whom they may be sent.

The prince, the general of the army, and the head commanders in each division have alone the right to send a trumpeter or drummer; and they can, likewise, only send them to the commander-in-chief. If the general who is besieging a town should undertake to send a trumpeter to some subordinate officer, to the mayor, or the town council, the governor of the town might justly regard the trumpeter as a spy. Francis I, when at war with Charles V in 1544, sent a trumpeter to the Diet of the Empire, then assembled at Spires. The Emperor seized the trumpeter and threatened to hang him, because the trumpeter had not been sent to him as Emperor.(*a*) But he dared not carry out his threat, doubtless because he knew well, in spite of his assertions, that, since the Diet had the right, even without his consent, to hear proposals from an enemy, the enemy could send a trumpeter to it. On the other hand, a general would scorn to receive a drummer or trumpeter from a subordinate officer unless the messenger were sent for some special object within the scope of the actual authority committed to the subordinate officer. At the siege of Rhinberg, in 1598, a colonel of a Spanish regiment presumed to demand the surrender of the town; the governor sent word to the drummer that he must withdraw, and that if another drummer or trumpeter should be so insolent as to come as the messenger of a subordinate officer the governor would have him hanged.(*b*)

§ 92. Independence of public ministers.

The inviolability of the public minister, or the security which is due to him in a more sacred and particular manner than to all others, whether foreigners or citizens, is not his only privilege. By the universal custom of Nations he is made completely independent of the jurisdiction and of the authority of the State where he resides. Some authors(*c*) claim that this independence is merely a matter of international regulation, and that it is to be referred to the arbitrary Law of Nations, which results from manners, customs, or special agreements; they deny that it is derived from the natural Law of Nations. It is true that the natural law gives men the right to repress and to punish those who injure them, and consequently it authorizes sovereigns to punish an alien who disturbs the public peace, who offends them personally, or who maltreats their subjects; it authorizes them to compel that alien to conform to the laws and to fulfill faithfully his obligations to the citizens. But it is not less true that the same natural law imposes upon all sovereigns the

---

(*a*) Wicquefort, *ubi supra.* (*b*) *Idem, ibid.* (*c*) See Wolf, *Jus Gent.*, § 1059.

obligation of consenting to those conditions without which Nations could not cultivate the society which nature has established among them, could not have mutual intercourse, negotiate their affairs, or adjust their differences. Now, ambassadors and other public ministers are necessary instruments in the maintenance of that general society of Nations and of that mutual intercourse between them. But they can not accomplish the object of their appointment unless they are endowed with all the prerogatives necessary to perform the duties of their charge safely, freely, faithfully, and successfully. Consequently, the same Law of Nations which obliges Nations to receive foreign ministers likewise clearly obliges them, in receiving those ministers, to accord them all the rights they require and all the privileges necessary for the performance of their duties. It is easy to see that independence must be one of those privileges. Without it the security which is so necessary to a public minister would be of a very uncertain character; the minister might be troubled, harassed, and maltreated upon a thousand pretexts. It frequently happens that a minister is intrusted with commissions which are disagreeable to the sovereign to whom he is sent. If that prince has any power over him, and particularly if he has sovereign authority over him, how is it to be expected that the minister will carry out the orders of his master with the requisite fidelity, courage, and freedom? It is necessary that he should have no snares to apprehend, that he should not be interfered with in the performance of his duties by any intrigues, that he should have nothing to hope and nothing to fear from the sovereign to whom he is sent. Consequently, in order to insure the success of his mission, he must be independent of the sovereign authority, of both the civil and the criminal jurisdiction of the country. We may add that the nobility and other persons of distinction would be averse to undertaking the duties of an ambassador if that position required them to submit to the authority of a foreign State, which frequently might be on a footing of no great friendship with their own State, so that they would have to maintain disagreeable claims and enter into discussions from which bitterness of feeling would easily result. Finally, if an ambassador could be indicted for ordinary misdemeanors, and criminally prosecuted, imprisoned, and punished, if he could be sued in civil cases, it would often happen that he would have neither the power, nor the time, nor the freedom of mind which the affairs of his sovereign required. Again, how could the dignity of the representative character be upheld under such a subjection? For all these reasons it is impossible to believe that it is the intention of the prince who sends an ambassador, or any other minister, to subject him to the authority of a foreign power. Here, again, is a further reason in support of the independence of public ministers. If it can not be reasonably presumed that the sovereign of the minister would consent to subject him to the authority of the sovereign to whom he is sent, the latter, in receiving the minister, consents to receive him upon that footing of independence; and this constitutes between the two princes a tacit convention which gives a new force to the natural obligation.

Practice is in entire accord with the principles just laid down. All sovereigns claim complete independence for their ambassadors and ministers. If it be true that a certain Spanish King, desiring to assume jurisdiction over the foreign ministers at his court, wrote to all the Christian princes that if their ambassadors should happen to commit any crime in the localities where they were residing it was his intention that they should forfeit their privileges and be judged according to the laws of the country,(*a*) a solitary instance proves nothing in a matter of this kind, and similar views have not been entertained by succeeding Spanish sovereigns.

(*a*) The fact is stated by Antoine de Vera in his *Idée du parfait Ambassadeur;* Wicquefort doubts its truth, on the ground, as he says, that it is mentioned by no other writer (*L'Ambassadeur*, Liv. I, § 29, at the beginning.)

§ 93. Conduct to be observed by a foreign minister.

This independence of the foreign minister must not be converted into unrestrained license; it does not release him from the duty of conforming in his external conduct to the customs and laws of the country in all that does not relate to his character as ambassador; he is independent, but he has not the right to do whatever he pleases. For example, if there is a general prohibition against passing in a carriage near a powder magazine, or over a bridge, or against visiting and examining the fortifications of a town, etc., such a prohibition must be respected by an ambassador. If he forgets his duties, if he becomes insolent, if he commits crimes and misdemeanors, there are various means of checking him according to the gravity and the character of the offense. We shall discuss these means after we have said a few words upon the conduct to be observed by a public minister in the place of his residence. He must not take advantage of his independence to violate the laws and customs, but must rather conform to them in so far as they concern him, although the magistrate has no power to constrain him; above all, he is obliged to observe scrupulously the general rules of justice towards all those who have dealings with him. In his relations with the prince to whom he is sent, the ambassador should remember that his mission is one of peace and that it is only in that light that he is received. His mission forbids him from engaging in any wrongful acts. Let him serve his sovereign without injuring the prince who receives him. It is base treason for him to make use of his inviolable character in order to plot without fear the destruction of those who respect that character, to lay snares for them, to harm them secretly, to confound and destroy their interests. Is conduct which would be infamous and abhorrent in a private guest to be considered as honest and legitimate in the representative of a sovereign?

Here arises a question worthy of consideration. It is but too common for ambassadors to endeavor to corrupt the fidelity of the ministers of the court where they reside and that of the secretaries and other officials of the government. What is to be thought of such conduct? To corrupt and seduce a person, to persuade him, by the strong temptation of money, to betray his prince and violate his duty, is unquestionably an evil act according to every established principle of morality. How comes it that so little is thought of such conduct in political affairs? A certain wise and upright statesman(*a*) makes it clearly enough understood that he condemns absolutely that shameful practice; but for fear of *the resentment of politicians* he limits himself to advising that it be only resorted to as a last resource. For our part, since we stand upon the sacred and unchangeable principles of justice, let us, in all loyalty to the moral world, declare boldly that the expedient of corrupting public officers is contrary to every principle of virtue and integrity, and that it is in evident violation of the natural law. Nothing more dishonest or more opposed to the mutual duties of men can be imagined than to induce a person to do evil. He who bribes another is certainly guilty of a crime against the wretch whom he seduces; and as regards the sovereign whose secret plans are discovered in this way, is it not a wrong and an injury done to him to take advantage of the favorable access which he grants to his court, in order to corrupt the fidelity of his servants? He is justified in banishing such a minister from his dominions and in demanding satisfaction of the sovereign who sent him.

If ever bribery be excusable it is when a case occurs in which bribery is the sole means of detecting and thwarting a shameful plot which might destroy, or put in great danger, the State which the minister represents. He who betrays such a

---

(*a*) M. Pecquet, Discours sur l'art de négocier, pp. 91, 92.

plot may, under certain circumstances, not be guilty of any crime; the great and legitimate benefit that results from the act which he is persuaded to do, and the necessity there is of having recourse to such measures, may dispense us from considering too scrupulously what is questionable in the act. To win him over is nothing more than justifiable self-defense. Every day we find ourselves obliged, in order to baffle the plots of the wicked, to turn to account the evil dispositions of men of the same stamp. It was on that ground that Henry IV said to the Spanish ambassador that "it is lawful for an ambassador to make use of bribery in order to discover the plots which are being laid against his sovereign,"(*a*) adding that the incidents of Marseilles, of Metz, and several other cases were sufficient proof that he had grounds for endeavoring to detect the plans which were being formed at Brussels against the peace of his Kingdom. But it was certainly not the opinion of that great prince that seduction is at all times an excusable practice in a foreign minister, since he ordered the arrest of Bruneau, the secretary of the Spanish minister, who had bribed Mairargues to deliver up Marseilles to the Spaniards.

Merely to take advantage of the offer of a traitor whom we have not seduced is less contrary to justice and honesty. But the examples cited above (Book III, §§155,181), showing the conduct of the Romans even when dealing with their declared enemies, those examples, I say, prove that a man of noble mind will reject even that expedient, in order to discourage so infamous an act as treason. A prince or a minister whose principles are not lower than those of the ancient Romans will allow himself to accept the offers of a traitor only when under pressure of cruel necessity; and he will regret the fact that he owes his safety to so unworthy a measure.

I do not mean, however, to condemn here the attentions which an ambassador shows, nor even the presents which he gives and promises he makes, in order to win friends for his sovereign. To conciliate the affection of men is not the same as seducing them and inciting them to crime; and it is the duty of these new friends to see to it that their interest in a foreign prince shall never make them swerve from the fidelity which they owe to their sovereign.

§ 94. How he may be restrained, (1) with regard to ordinary transgressions.

If an ambassador forgets the duties of his position, if he renders himself offensive and dangerous, if he forms plots or schemes hurtful to the peace of the citizens, or to the State or prince to whom he is sent, there are, as a means of checking him, various measures proportionate to the nature and the extent of his offense. If he injures the subjects of the State, if he wrongs them in any way or commits an act of violence against them, the injured subjects should not have recourse to the ordinary magistrates, since the ambassador is independent of their jurisdiction; and for the same reason the magistrates should not prosecute him directly. On such occasions the injured persons should apply to their sovereign, who will demand justice from the ambassador's master, and, in case it is refused, will order the unruly minister to leave his domains.

§ 95. (2) In the case of offenses committed against the sovereign.

If the foreign minister offends the prince himself, if he fails in due respect to him, if he embroils the State and the court by his intrigues, the injured prince, out of a desire to keep on good terms with the minister's sovereign, sometimes limits himself to asking for the recall of the minister; or, if the offense is more serious, he may forbid the minister to appear at court while awaiting the answer of the minister's sovereign. In grave cases he may even go so far as to expel the minister from his dominions.

(*a*) See Sully's memoirs, and the French historians.

§ 96. Right to expel an ambassador who is guilty or justly suspected.

Undoubtedly every sovereign has the right to take such measures, for he is master in his own dominions, and no foreigner can remain at his court or in his States without his consent. And although sovereigns are in general bound to hear the proposals of foreign powers and to receive their ministers, the obligation ceases entirely with respect to a minister who fails in the duties which his position requires of him, and renders himself an object of danger or of just suspicion to the sovereign to whom he properly comes as a minister of peace. Would a prince be obliged to suffer a secret enemy, who was disturbing the peace of the State and plotting his destruction, to remain in his dominions and at his court? It was a singular answer which Philip II made to Queen Elizabeth when she sent a request to him to recall his ambassador, because the latter was forming dangerous plots against her. The King of Spain refused to recall him, saying that "it would be a very hard lot for princes if they were obliged to recall their ministers whenever the conduct of the latter did not suit the humor or the interest of those with whom they were negotiating."(*a*) It would be a much harder lot for princes if they were obliged to suffer the residence, in their dominions and at their court, of an offensive minister, or one justly suspected, a disturber of the peace, an enemy disguised under the mask of an ambassador, who should take advantage of his inviolable character boldly to contrive dangerous plots. The Queen, justly indignant at the refusal of Philip, appointed guards to watch over the ambassador.(*b*)

§ 97. Right to repress him by force if he acts as an enemy.

But must the sovereign always limit himself to expelling an ambassador, no matter how grave the misconduct of the latter be? Such is the belief of certain authors, who argue from the perfect independence of the public minister. I agree that the minister is independent of the jurisdiction of the country, and I have already said that for this reason the ordinary magistrate can not proceed against him. I agree also that in all cases of ordinary misdemeanors, of scandals and disturbances, which are injurious to the citizens and to society, yet do not endanger the safety of the State or of the sovereign, a consideration for the character of the minister, whose office is so necessary to the intercourse of Nations, and for the dignity of the prince whom he represents, requires that complaint be made to the prince of the improper conduct of his minister, and satisfaction be requested of him; and that if no redress can be obtained, the offended sovereign limit himself to expelling the minister, in case the offenses of the minister are so serious as to require absolutely that a stop be put to them. But is an ambassador to be allowed to plot with impunity against the State where he resides, to contrive its ruin, to stir up its subjects to revolt, and to concoct without fear the most dangerous conspiracies, whenever he is assured of the support of his sovereign? If he behaves as an enemy, shall it not be permissible to treat him as such? The answer is clear, in the case of an ambassador who acts as an aggressor, who takes up arms, who commits acts of violence. Those whom he attacks may resist him, self-defense being justified by the natural law. Those Roman ambassadors who were sent to the Gauls, but who fought against them with the people of Clusium, divested themselves by their own act of their representative character.(*c*) Will any one assert that the Gauls should have spared them in battle?

§ 98. Case of an ambassador forming dangerous plots and conspiracies.

The question presents greater difficulty in the case of an ambassador, who, without committing actual acts of violence, contrives dangerous plots, who by his intrigues incites subjects to revolt, and who forms and encourages conspiracies against the sovereign or against the State. Shall a sovereign not be allowed to

---

(*a*) Wicquefort, *ubi supra*, Liv. i, § 29. (*b*) *Idem, ibid.*

(*c*) Livy, Lib. v, Cap. xxvi. The historian decides without hesitation that the ambassadors violated the Law of Nations: "Legati contra jus gentium arma capiunt."

repress and inflict due punishment upon a traitor who abuses his inviolability and himself violates the Law of Nations? That sacred law provides no less for the security of the prince who receives an ambassador than for that of the ambassador himself. But, on the other hand, if the offended prince is allowed to punish a foreign minister in such a case, there will arise frequent grounds of dispute and quarrel between the two Nations, and it is much to be feared that the ambassadorial character will be deprived of the security which is necessary to it. There are certain acts which, although not always strictly proper, are tolerated in foreign ministers; and there are others which must be checked, and for which, since punishment is impossible, the minister is ordered to withdraw. How is a line of distinction to be drawn between the several degrees of offense? If persons desire to trouble a minister they will exhibit his designs in an ugly light, they will put a wrong interpretation upon his plans and undertakings, and they will even stir up false accusations against him. Finally, since the plots a minister might form are ordinarily laid in secret and with precautions against detection, complete proof of them is difficult to obtain, and can hardly be got without the procedure of a court of justice, to which a minister, who is independent of the jurisdiction of the country, can not be subjected.

In laying the foundations of the *voluntary* Law of Nations (Introd., § 21) we have seen that Nations must sometimes, in the interests of their general welfare, deprive themselves necessarily of certain rights, which, taken in the abstract and apart from any other consideration, naturally belong to them. Thus it is only the sovereign whose cause is just who is really entitled to the rights of war (Book III, § 188); and yet he is obliged to consider his enemy as having equal rights with himself, and to treat him accordingly (*ibid.*, §§ 190, 191). The same principles must be applied here. We say, then, that because of the great usefulness and, indeed, necessity of maintaining embassies, sovereigns are obliged to respect the inviolability of an ambassador, so long as it does not prove imcompatible with their own safety and the welfare of their State. Consequently, when the designs of an ambassador have been laid bare and his plots discovered; when the danger is over, so that there is then no need to lay hands upon the minister in order to prevent the injury, the offended sovereign must, out of consideration for the representative character of the minister, renounce his general right to punish a traitor and a secret enemy who is plotting against the safety of the State, and limit himself to expelling the guilty minister and asking for his punishment at the hands of the sovereign to whom he is subject.

This is, in fact, the accepted practice of the majority of Nations, and especially of the Nations of Europe. Wicquefort(*a*) enumerates several cases in which the principal sovereigns of Europe were satisfied with expelling from their States ambassadors who were guilty of injurious designs, and sometimes did not even demand punishment for them from their sovereigns when they saw no hope of obtaining it. Let us further mention the consideration shown by the Duke of Orleans, Regent of France, towards the Prince de Cellamare, ambassador of Spain. When the latter was detected forming a dangerous conspiracy against him, the Prince contented himself with appointing a guard over the minister, seizing his papers, and having him conducted from the Kingdom. Roman history furnishes us a very early example of similar treatment shown to the ambassadors of Tarquin. When the latter came to Rome under pretext of claiming the private property belonging to their master, who had been expelled, they bribed certain corrupt

---

(*a*) L'Ambassadeur, Liv. 1, §§ 27, 28, 29.

youths and induced them to enter into an infamous and treasonable conspiracy against their country. Although the conduct of the ambassadors seemed to warrant their being treated as enemies, the Consuls and the Senate respected in their persons the Law of Nations.(*a*) The ambassadors were sent back without having been punished in any way; but it appears from Livy's account of the affair that the letters which they bore from the conspirators to Tarquin were taken from them.

§ 99. What action may be taken against him according to the urgency of the case.

This example leads us to the true rule of the Law of Nations in the case before us. An ambassador can not be punished, because he is independent; and, for the reasons which we have just set forth, it is not proper to treat him as an enemy, so long as he does not himself proceed to open acts of violence and assault; but such action may be taken against him as is reasonably necessary to ward off the evil which he is plotting and to defeat his designs. If, in order to anticipate and foil a conspiracy, it should be necessary to arrest, and even to put to death, an ambassador who is the soul and the guiding spirit of the plot, I do not see any reason why we should hesitate to take such measures, not only because the safety of the State is the supreme law, but also because, independently of that principle, the ambassador's own conduct gives us a perfect right to take such steps in that particular instance. The public minister is independent, it is true, and his person is sacred; but it is undoubtedly lawful to repel his attacks, whether secret or open, and to defend ourselves against him when he acts as an enemy and a traitor. And if we can not save ourselves without harm coming to him, it is he who puts us under the necessity of not sparing him. In that case it can be said with reason that the minister deprives himself, by his own act, of the protection of the Law of Nations. Suppose that the Venetian Senate, on learning of the conspiracy of the Marquis de Bedmar,(*b*) and being convinced that the ambassador was the prime mover and leader of it, had not had sufficient information from other sources to enable it to crush that infamous plot; that it had been uncertain of the number and rank of the conspirators, of the purpose of the conspiracy, and of the place where it was to be carried out; that it had been in doubt as to whether the design was to raise a revolt among the naval or the land forces, or to take some important fortress by surprise; would it have been obliged to allow the ambassador liberty to depart, and thereby give him the opportunity to go and put himself at the head of the conspirators and bring their plans to a successful issue? No one will seriously maintain the affirmative. The Senate, then, would have had the right to cause the arrest of the marquis and all his household, and even to extort from them their abominable design. But those prudent republicans, seeing that the danger was over and the conspiracy entirely crushed, wished to maintain friendly relations with Spain, and giving orders that the Spaniards were not to be accused of having had part in the plot, they merely requested that the ambassador should be withdrawn, so as to protect him from the anger of the people.

§ 100. Case of an ambassador making an attempt upon the life of the prince.

The same rule is to be followed here that we laid down above (Book III, § 136), when treating of what measures may be lawfully taken against an enemy. When an ambassador acts as an enemy we may take such measures against him as are necessary to thwart his evil designs and to secure our own safety. It is upon that same rule, and upon the principle that when an ambassador acts as a public enemy he is to be considered as such, that we undertake to determine what treatment he shall receive in case he carries his misdeeds to the last degree of heinousness. If an ambassador commits those atrocious crimes which are an attack upon the safety

---

(*a*) Et quamquam visi sunt (legati) commisisse, ut hostium loco essent, jus tamen gentium valuit. (Livy, Lib. II, Cap. IV.)

(*b*) See the history of it written by the Abbé de St. Réal.

of the whole human race, if he attempts to assassinate or to poison the prince who has received him at his court, he unquestionably deserves to be punished as a treacherous enemy, as a poisoner, or an assassin (see Book III, § 155). His representative character, thus shamefully defiled, can not save him from punishment. Is the Law of Nations to protect a criminal when the safety of all rulers and the welfare of the human race call for his death? It is true that there is little reason to think that a public minister will go so far as to commit such dreadful crimes. It is generally men of honor who are appointed to those positions, and although there might be some among them who scruple at nothing, the difficulties and the great danger involved in the act are sufficient to deter them. However, such crimes are not unexampled in history. Barbeyrac(*a*) relates, upon the authority of the historian Cedrenus, the case of the assassination of the Lord of Sirmium by an ambassador sent to him by Constantine Diogenes, governor of the neighboring province under Basil II, Emperor of Constantinople. The following story is also in point. In 1382, Charles III, King of Naples, sent to his competitor, Louis, Duke of Anjou, a knight by the name of Matthew Sauvage, as a herald to challenge Louis to single combat. The herald was suspected of carrying a demi-lance, the point of which was tinged with a poison so subtle that whoever should look steadily at it or allow it to touch his clothes would fall dead on the spot. The Duke of Anjou, having been warned, refused to receive the herald and had him arrested. The herald was questioned, and, upon his own confession, was beheaded. Charles complained of the death of his herald as a violation of the laws and customs of war. Louis maintained in his answer that he had not violated the laws of war in his treatment of Sauvage, who had been condemned upon his own confession.(*b*) If the crime imputed to the knight had been clearly proven, the herald was an assassin whom no law could protect. But the very nature of the accusation is sufficient evidence of its falsity.

§ 101. Two remarkable cases illustrating the immunities of public ministers.

The point which we have just discussed has been debated in England and in France upon two famous occasions. It was argued at London in a case arising out of the conduct of John Leslie, Bishop of Ross, ambassador of Mary, Queen of Scots. That minister was continually plotting against Queen Elizabeth and against the peace of the State; he formed conspiracies and stirred up the subjects to revolt. Five of the most able lawyers, when consulted by the privy council, gave it as their opinion "that an ambassador who excites a rebellion against the prince at whose court he resides forfeits the privileges of his position and is subject to the penalties of the law." They should rather have said that he can be treated as an enemy. But the council was satisfied with ordering the arrest of the bishop, and after having kept him for two years a prisoner in the tower, released him when there was no longer anything to be feared from his intrigues and sent him out of the Kingdom.(*c*) The example may serve to confirm the principles that we have laid down, and the following case is equally corroborative of them: Bruneau, secretary of the Spanish ambassador to France, was caught in the act of bargaining with Mairargues, in time of peace, for the surrender of Marseilles to the Spaniards. He was put in prison, and was subjected to a judicial examination by the Parliament before which Mairargues was tried. The Parliament, however, did not condemn him, but referred his case to the King, who restored the secretary to his master on condition that the latter should see that he left the Kingdom immediately. The ambassador complained warmly of the imprisonment of his secretary, but Henry

---

(*a*) In his notes upon Bynkershoek's treatise, *De foro legatorum*, Cap. XXIV, § 5, n. 2.

(*b*) *Histoire des Rois des deux Siciles*, by d'Egly.

(*c*) Camden, Annal. Angl. ad ann., 1571, 1573.

IV returned the very reasonable answer, "that the Law of Nations does not forbid the arrest of a public minister, if done in order to deprive him of the means of doing harm." The King might have added that a Nation has also the right to take such measures against a minister as are necessary to protect itself from the mischief he has planned, and to thwart his schemes and prevent their accomplishment. It was on this ground that the Parliament was warranted in subjecting Bruneau to an examination in order to discover those who were implicated with him in so dangerous a plot. The question whether foreign ministers who violate the Law of Nations forfeit their privileges was earnestly debated at Paris, but the King restored Bruneau to his master without waiting until the point was decided.(*a*)

§ 102. Whether a sovereign may retaliate upon an ambassador.

It is not lawful to ill-treat an ambassador by way of retaliation, for the prince who uses violence against a public minister commits a crime, and it is not proper to avenge it by a similar crime. We are never justified in committing, by way of retaliation, an act which is essentially unlawful; and such would be undoubtedly the act of ill-treating an innocent minister because of the faults of his sovereign. If this rule is of general obligation in the practice of retaliation, it is of more particular force where an ambassador is concerned, because of the respect due to his character. After the Carthaginians had violated the Law of Nations towards the ambassadors of Rome, certain ambassadors from that perfidious Nation were brought to Scipio, and he was asked how he wished them to be dealt with: "Not," said he, "in the way they dealt with ours," and he dismissed them in safety.(*b*) But at the same time he made preparations to punish, by public war, the State which had violated the Law of Nations.(*c*) Such is the proper course for a sovereign to pursue on such an occasion. If the injury for which the sovereign desires to make retaliation was not committed against one of his ministers, it is even more certain that he is not allowed to retaliate upon the ambassador of the prince who is responsible for the injury. The security of public ministers would be very precarious if it were dependent upon every dispute that might happen to arise. But there is one case in which it would seem to be entirely proper to arrest an ambassador, provided no further ill-treatment be shown him. When a prince violates the Law of Nations by causing the arrest of our ambassador, we are justified in arresting and detaining his ambassador as security for the life and liberty of ours. If this measure should prove insufficient, it would then be necessary to release the innocent ambassador and obtain justice by more effective means. Charles V ordered the arrest of the French ambassador who had announced a declaration of war; whereupon Francis I in turn ordered the arrest of Granvelle, the Emperor's ambassador. It was afterwards agreed that the ambassadors should be conducted to the frontier and mutually released at the same time.(*d*)

§ 103. Consensus of nations as to privileges of ambassadors.

We have deduced the independence and inviolability of ambassadors from the principles of the natural and necessary Law of Nations. These prerogatives are further confirmed by the practice and general agreement of Nations. We have seen above (§ 84) that the Spaniards found the right of maintaining embassies

---

(*a*) See the discussion of this question and the answer which Henry IV made to the Spanish ambassador, in the Mémoires de Nevers, Tom. II, pp. 858 and foll.; in Matthieu, Tom. II, Liv. III; and in other historians.

(*b*) Appian, quoted by Grotius, Lib. II, Cap. XXVIII, § 7. According to Diodorus Siculus, Scipio said to the Romans: "Do not do that which you reproach the Carthaginians for having done." Σκίπιων, ὀυκ, ἔφη, δεῖν πράττειν, ὃ τοῖς Καρχηδονίοις ἐγκαλοῦσι. (Diod. Sicul. Excerpt. Peiresc., p. 290.)

(*c*) Livy, Lib. XXX, Cap. XXV. This historian makes Scipio say, "Although the Carthaginians have broken the truce and violated the Law of Nations in dealing with our ambassadors, I will not act against theirs in a manner unworthy of the principles of the Roman people and those of my own conscience."

(*d*) Mézeray, Histoire de France, Tom. II, p. 470.

acknowledged and respected in Mexico. The same right is recognized even among the savage tribes of North America. Turn to the opposite quarter of the globe and you will find that ambassadors are highly respected in China. They are also respected in India, though less scrupulously so, it is true.(*a*) The King of Ceylon has sometimes imprisoned ambassadors of the Dutch East-India Company. He knows that because cinnamon grows in his dominions the Dutch will overlook many things in favor of a rich commerce, and like a true barbarian he takes advantage of the fact. The Koran commands Mussulmans to respect public ministers; and if the Turks have not always obeyed that command the failure to do so is rather due to the ferocity of certain princes than to the principles of the whole Nation. The rights of ambassadors were well known among the Arabs. A writer(*b*) of that Nation relates the following incident: Khaled, an Arabian chief, having come as ambassador to the army of the Emperor Heraclius, spoke to the general in an insolent manner; whereupon the latter replied that "the law accepted by all Nations protected ambassadors from personal injury, and that it was probably that fact which had emboldened him to speak in so unbecoming a manner."(*c*) It would be useless to enumerate here all the examples to be found in the history of European Nations; they are countless in number, and the customs of Europe are sufficiently well known in this matter. St. Louis, when at Acre, gave a remarkable example of the protection to be given to public ministers. When an ambassador from the Old Man of the Mountain, or the Prince of the Assassins, spoke to the King in an insolent manner, the grand masters of the Knights Templars and of the Knights Hospitalers said to the envoy that "if it were not for the respect due to his office, they would have him thrown into the sea."(*d*) The King dismissed him without allowing any injury to be done him. However, since the Prince of the Assassins had himself violated the most sacred rights of Nations, it would seem that no protection was due to his ambassador, except upon the principle that, since such protection is based upon the necessity of maintaining some safe means by which sovereigns may make proposals to one another and carry on negotiations both in peace and in war, it should be extended even to the envoys of princes, who, being themselves guilty of violating the Law of Nations, would otherwise deserve no consideration.

§ 104. The free exercise of religion.

There are rights of another nature which it is not so essential that public ministers should possess, but which by custom have been conceded to them in almost all countries. One of the most important of these rights is the free exercise of the minister's religion. It is, indeed, very suitable that a minister, and especially a resident minister, should be allowed the free exercise of his religion in his house, for himself and his retinue. But it can not be said that this right, like that of independence and inviolability, is absolutely necessary to the due success of his mission, especially in the case of a non-resident minister, the only one whom Nations are under obligation to admit (§ 66). The minister may, in this matter, do what he pleases in the privacy of his house, into which no one has a right to enter. But if the sovereign of the country in which he resides is unwilling, for good reasons, to allow him to practise his religion in such a way as to bring it to public notice, there is no ground for condemning the sovereign, much less for accusing him of violating the Law of Nations. At the present day ambassadors are not

---

(*a*) Histoire générale des Voyages, article on China and the Indies.
(*b*) Alvakédi, Histoire de la Conquête de la Syrie.
(*c*) Ockley's history of the Saracens, vol. 1, p. 294 of the French translation.
(*d*) Choisy, Histoire de Saint Louis.

denied the free exercise of their religion in any civilized country, for a privilege which is founded on reason can not be refused when it is attended with no ill effects.

§105. Whether ambassadors are exempt from the payment of imposts.

Among the rights that are not essential to the success of embassies, there are certain ones which, though not based upon a general agreement on the part of Nations, are nevertheless annexed to the representative character by custom in many countries. Such is the privilege by which ministers are exempted from the payment of import and export duties upon property which they bring into or send out of the country. There is no necessity for this exemption, since the payment of those duties would not render the minister less able to perform his functions. If the sovereign is pleased to exempt him from them, it is a courtesy which the minister can not claim as of right; no more than he can claim that the baggage which he brings with him from abroad shall not be subject to inspection by the custom-house officers; for such inspection is necessarily connected with the right to levy duties upon goods brought into the country. Thomas Chaloner, the English ambassador to Spain, complained bitterly to Queen Elizabeth that the custom-house officers had opened his trunks in order to search them. But the Queen replied that it was the duty of an ambassador to overlook whatever did not directly offend the dignity of his sovereign.(*a*)

The independence of the ambassador exempts him, it is true, from all personal or capitation taxes and other assessments of that character; and in general he is exempted from all taxes imposed upon citizens of the State as such. But as for the duties imposed upon goods or provisions of any kind, the most absolute independence does not exempt a minister from the payment of them, and even foreign sovereigns are subject to them. The following rule is observed in Holland: Ambassadors are exempt from the taxes which are levied upon consumption, doubtless because those taxes are more directly of a personal nature; but they pay import and export duties.

Whatever may be included in the exemption, it is perfectly certain that the privilege only extends to things intended for the ambassador's personal use. If they were to abuse their privilege, and dishonorably exploit it by lending their name to merchants, the sovereign would unquestionably have the right to put a stop to the deception, even by the suppression of the privilege. This is what has happened in several places. Sordid and avaricious ministers, by trafficking in their exemption, have forced the sovereign to deprive them of it. At the present day foreign ministers to St. Petersburg are subject to the duties on importation; but the Empress has the generosity to compensate them for the loss of a privilege which did not belong to them of right, and which she was obliged to abolish because it had been abused.

§ 106. Obligation resulting from practice and general custom.

But, it is asked, can a Nation abolish privileges which have been sanctioned by custom as belonging to foreign ministers? Let us examine, then, what obligation custom or received usage can impose upon Nations, not only in matters relating to ministers, but also in other matters in general. No usages or customs of other Nations can bind an independent State, except in so far as that State has given its express or implied consent to them. But when a custom, indifferent in itself, has been once established and received, it is binding upon Nations which have expressly or tacitly adopted it. However, if any of them happens to find at a later time that the custom is disadvantageous, it is free to declare that it is unwilling to abide by such a custom; and once it has clearly made known its intention there is no room

---

(*a*) Wicquefort, L'Ambassadeur, Liv. 1, § 28, near the end.

for complaint on the part of others if it does not observe the custom. But such an intention should be made known in advance, at a time when no particular Nation will be affected by the new rule; it is too late to make the change when a case in point has already arisen. It is a universally received principle that a law is not to be changed with respect to a case which has already arisen under it. Thus, in the particular matter before us, if a sovereign has declared in advance that he will receive ambassadors only upon a certain footing, he need not grant them all those privileges or show them all those honors which by custom have been previously attributed to ambassadors, provided those privileges and honors be not essential to an embassy and necessary to its proper success. To refuse privileges of this latter kind would be equivalent to refusing to receive an ambassador, which a State may not do as a general rule (§ 65), but only when there is some good reason for it. To withhold honors which have been consecrated by custom and have become in a manner essential, is a mark of contempt and an injury to the Nation whose minister is thus treated.

We must further remark on this subject that when a sovereign wishes to discontinue for the future an established custom, the new rule should be of general application to all Nations. To refuse certain customary honors or privileges to the ambassador of one Nation and at the same time to allow those of other Nations to enjoy them is an offense to that Nation and a mark of contempt, or at least of ill-will.

§ 107. Ministers whose character as such is not publicly known.

At times princes send one another secret ministers whose character as such is not publicly known. If such ministers are insulted by persons who are not aware of their character the act does not amount to a violation of the Law of Nations. But the prince who receives the minister, and who knows that he is a public minister, is under the same obligations towards him as towards one whose position is publicly known; he must protect him, and, as far as is in his power, he must see that the minister enjoys to the fullest extent the security and independence which the Law of Nations demands for ambassadors. The conduct of Francis Sforza, Duke of Milan, in putting to death Maraviglia, the secret minister of Francis I, is indefensible. Sforza had often treated with Maraviglia as a secret agent, and had acknowledged him as minister of the King of France.(*a*)

§ 108. Rights of a sovereign when in a foreign country.

At this point we can best introduce an important question of the Law of Nations which is closely connected with the right of maintaining embassies. What are the rights of a prince who happens to be in a foreign country, and how should the sovereign of the foreign country treat him? If that prince has come to negotiate some matter of public business, he should unquestionably enjoy, in an even higher degree than others, all the rights of ambassadors. If he comes as a traveler, his dignity alone, and the regard due to the Nation which he represents and governs, protects him from all insult, assures him the fullest respect and consideration, and exempts him from the jurisdiction of the country. Once he has made himself known he can not be treated as subject to the ordinary laws of the country; for it is not to be presumed that he has consented to submit to them, and if the sovereign of the country is unwilling to admit the prince upon that footing, he must warn him to withdraw. But if the foreign prince should form any design against the safety and welfare of the State, in a word, if he should act as an enemy, he may very properly be treated as such. Apart from that case, full protection should be accorded him, since it is due even to private citizens of a foreign State.

(*a*) See the *Mémoires* of Martin Du-Bellay, Liv. IV, and *Histoire de France*, by P. Daniel, Tom. V, p. 300, and foll.

An absurd opinion has come to be held even by persons who think themselves superior in intelligence to the mass of mankind. They assert that a sovereign who enters a foreign country without permission may be arrested there.(*a*) On what ground can such an act of violence be justified? The idea refutes itself by its own absurdity. It is true that the foreign sovereign should give warning of his coming if he desires to have due consideration shown him. It is also true that it would be prudent on his part to ask for passports in order to deprive ill-disposed persons of any opportunity or any hope of covering over their acts of injustice and violence by specious motives. I agree further that since the presence of a foreign sovereign on certain occasions may be a matter of concern, if the situation is in any degree critical and the visit of the Prince open to suspicion, he should not undertake it without asking the consent of the sovereign whose territory he wishes to enter. When Peter the Great wished to make a personal visit to foreign countries in order to study the arts and sciences which would enable him to improve his Empire, he traveled as one of the retinue of his own ambassadors.

A foreign prince unquestionably retains all of his rights over his own State and his subjects, and he may exercise them in every case which does not affect the sovereignty of the territory in which he happens to be. For this reason it would seem that the French court was too zealous of its rights in not allowing the Emperor Sigismund, when at Lyons, to confer the title of duke upon the Count of Savoy, who was a vassal of the Empire (see above, Book II, § 40). Less difficulty would have been made in the case of another prince, but scrupulous care was taken to guard against the old claims of the Emperors. On the other hand, the same court with good reason protested against the act of Queen Christina in executing in her own house one of her domestics; for an execution of that kind is an act of territorial jurisdiction. Moreover, Christina had abdicated the crown; and although her reservations, her birth, and her dignity might well entitle her to great honors, or at most to complete independence, they did not give her all the rights of an actual sovereign. The famous case of Mary, Queen of Scots, so often cited in this connection, is not much in point. That Princess no longer possessed the crown when she came to England, and was there arrested, tried, and sentenced to death.

§ 109. Deputies of States.

The deputies sent to the assembly of the Estates of a Kingdom, or of a Republic, are not public ministers like those of whom we have just spoken, since they are not sent to foreign countries; but they are public persons, and as such have certain privileges which we must briefly set forth before leaving this subject. States which have the right to assemble by deputies, in order to deliberate upon public affairs, are warranted by that very fact in demanding the fullest protection for their representatives and all exemptions required for the free exercise of their functions. If the persons of deputies are not inviolable, the States which send those deputies can not be assured of their fidelity in maintaining the rights of the Nation and in defending courageously the public welfare. How will these representatives be able to acquit themselves worthily of their duties if they may be interfered with by being brought before a court of justice either for debts or for ordinary misdemeanors? The same reasons which justify, as between State and State, the immuni-

---

(*a*) It is surprising to find a thoughtful historian fall into this error. (See Gramond, *Hist. Gall.*, Lib. XIII.) Cardinal Richelieu likewise alleged that unsound reason when he ordered the arrest of Charles Louis, Elector of Palatine, who was attempting to pass through France *incognito*. He said "that it was not permissible for any foreign prince to travel through the Kingdom without a passport." But he added better reasons, based upon the designs of the Prince Palatine upon Brisac and other towns left by Bernard, Duke of Saxe-Weimar, to which France claimed to have a greater right than others, because those conquests had been made with her money. (See L'Histoire du Traité de Westphalie, by P. Bougeant, Tom. II, in 12 mo., p. 88.)

ties of ambassadors, hold good here as between Nation and sovereign. We say, then, that the rights of the Nation and the public good faith protect these deputies from all violence and even from judicial prosecution during the term of their appointment. This, in fact, is the rule followed in every country, and particularly in the case of the Diets of the Empire, the Parliaments of England, and the Cortes of Spain. Henry III, King of France, at the meeting of the States-General at Blois, put to death the Duke and the Cardinal de Guise. The inviolability of the States-General was certainly transgressed by that act. But those princes were seditious rebels who carried their bold designs even to the point of plotting to deprive their sovereign of his crown; and if it is equally true that Henry was no longer in a position to have them arrested and punished according to the laws, the necessity of just self-defense justified and excused the act of the King. It is the misfortune of weak and incompetent princes that they let themselves be put in positions from which they can not extricate themselves without violating every established rule. It is said that Pope Sixtus V, on learning of the death of the Duke de Guise, commended that rigorous measure as a necessary stroke of policy; but that he became enraged when told that the Cardinal had also been killed.(*a*) This was carrying his haughty pretensions too far. The Pontiff agreed that urgent necessity had justified Henry in infringing upon the inviolability of the States-General and setting aside the established forms of judicial procedure. Did he expect that prince to risk his crown and his life rather than fail in respect for the Roman purple?

(*a*) See the French historians.

CHAPTER VIII.

Jurisdiction Over Ambassadors in Civil Cases.

§ 110. An ambassador is exempt from the civil jurisdiction of the country where he resides.

Certain authors assert that an ambassador should be subject, in civil cases, to the jurisdiction of the country where he resides, at least with respect to cases which arise during the time of his ambassadorship; and they allege in support of their opinion that such subjection is in no way repugnant to the office of ambassador; "however sacred," they say, "his person may be, it is no infringement of his inviolability to bring him before a court of justice in a civil case." But it is not because their person is *sacred* that ambassadors can not be sued; it is because they are not subject to the jurisdiction of the country to which they are sent; and we have shown above (§ 92) the valid reasons upon which that independence is based. Let us add here that it is entirely proper and even necessary that an ambassador should not be subject to judicial procedure even in civil matters, in order that he may not be interfered with in the exercise of his functions. For a like reason the Romans would not permit a priest to be sued during the time he was performing his sacred duties;(*a*) but he might be sued at other times. The reason upon which we base our position is thus stated in Roman law: "Ideo enim non datur actio (adversus legatum), ne ab officio suscepto legationis avocetur;(*b*) ne impediatur legatio."(*c*) But an exception was made of cases arising out of affairs transacted during the time of the embassy. The exception was reasonable in regard to those *legati* or ministers to whom the Roman law refers in this place, since, being sent by Nations subject to the Empire, they could not claim the independence enjoyed by a foreign minister.

As legislator the sovereign may ordain as he thinks best with respect to subjects of the State; but it is not in like manner in his power to subject to his jurisdiction the minister of another State. And even though he could do so by agreement or otherwise, that would not improve matters. The ambassador could still be frequently troubled in the exercise of his functions and the State led into disastrous quarrels for the trifling interests of some private citizens who could and should have taken greater care to protect themselves. It is, therefore, in entire accord with the duties of Nations and with the great principles of the Law of Nations that, by the common practice and the agreement of all Nations, ambassadors or public ministers are at the present day absolutely independent of the jurisdiction of the State where they reside, as well in civil as in criminal matters. I know some instances have occurred to the contrary; but a small number of cases does not create a custom; in fact, by the condemnation they have received, they prove the custom to be such as I have stated it. In the year 1668 a resident minister of Portugal at The Hague was, by order of the court of justice, arrested and imprisoned for debt. But an illustrious member(*d*) of that same court justly holds that the procedure was unlawful and contrary to the Law of Nations. In the year 1657 a resident minister of the Elector of Brandenburg was in like manner arrested for debt in England. But he was released on the ground that his arrest was unlawful; and not only that, but the creditors and officers of justice who had shown him that indignity were punished.(*d*)

(*a*) Nec pontificem (in jus vocari oportet) dum sacra facit. (Digest. Lib. II, Tit. IV, De in jus vocando, Leg. II.)

(*b*) Digest., Lib. V, Tit. I. *De judiciis*, etc. Leg. XXIV, § 2.

(*c*) *Ibid.*, Leg. XXVI.

(*d*) Bynkershoek, *De foro legatorum*, Cap. XIII, § 1.

§ 111. When he may subject himself voluntarily to it.

But if an ambassador chooses to give up in part his independence, and to subject himself to the jurisdiction of the country in civil matters, he can doubtless do so, provided he have the consent of his sovereign. Without that consent the ambassador has no right to give up those privileges in which the dignity and the service of his sovereign are involved, and which are based upon his sovereign's rights and are granted for the sovereign's advantage and not for that of the minister. It is true that, without waiting for the permission of his sovereign, an ambassador submits to the jurisdiction of the country when, as plaintiff, he brings suit against a person. But that is an unavoidable result of his act; and moreover, no difficulty is met with in a civil case where private interests are involved, because the ambassador is always at liberty not to bring suit, and he may, if necessary, employ an attorney or a barrister to prosecute the case.

Let us add, in passing, that an ambassador must never act as plaintiff in a criminal action. If he has been insulted he should carry his complaint to the sovereign, and the offender should be prosecuted by the public attorney.

§ 112. A minister who is a subject of the country to which he is accredited.

It may happen that the minister of a foreign power is at the same time a subject of the State to which he is accredited; and in that case, as a subject, he unquestionably remains amenable to the jurisdiction of the country in all that does not relate directly to his office. But it is a question to determine in what cases those two characters of subject and foreign minister are united in the same person. To constitute that combined character it is not enough that the minister be born a subject of the State to which he is sent; for unless the laws expressly forbid a citizen to expatriate himself, he may lawfully renounce his allegiance to his country in order to subject himself to a new sovereign; he may even, without expatriating himself forever, become independent of his country for the entire time during which he is in the service of a foreign prince. The presumption is certainly in favor of such independence; for the position and the duties of a public minister naturally demand that he should be subject only to the sovereign whose affairs he is managing (§ 92). Consequently, whenever there is no proof or indication to the contrary, a foreign minister, although previously a subject of the State, is regarded as absolutely independent of it during the whole time of his appointment. If his former sovereign does not wish to grant him that independence in his own country, he may refuse to receive him in the character of a foreign minister, as is done in France, where, according to M. de Callières,(*a*) the King "no longer receives his own subjects as ministers of other sovereigns."

But a citizen may take a commission from a foreign prince and yet still remain a subject of his own State. His status as subject is definitely fixed when the sovereign, in receiving him as minister, puts the condition that he shall remain a subject of the State. The States-General of the United Provinces, by a decree of June 19, 1681, declared "that no subject of the State shall be received as ambassador or minister of a foreign power, except on condition that he shall not give up his character of subject even with respect to the jurisdiction of the country, whether in civil or in criminal matters; and that if any person shall present his credentials as ambassador or minister, without mentioning that he is a subject of the State, he shall not enjoy the rights or privileges which belong only to ministers of foreign powers."(*b*)

Such a minister may also preserve his former allegiance *tacitly*, in which case it is known that he continues to be a subject, by a natural inference drawn from his

---

(*a*) Manière de négocier avec les Souverains, chap. VI.
(*b*) Bynkershoek, *ubi supra*, Cap. XI, at the end.

acts, his public position, and his whole conduct. Thus, even independently of the declaration just quoted, those Dutch merchants who obtain commissions as resident ministers of certain foreign princes, and who nevertheless continue to carry on their commerce, sufficiently indicate by that fact that they still remain subjects. Whatever inconveniences may result from this dependence of a minister upon the sovereign to whom he is accredited, if the foreign prince is willing to put up with them, and to have a minister serve him under those conditions, it is his own affair, and he can not complain if his minister is treated as a subject.

Further, a foreign minister may become a subject of the sovereign to whom he is sent by holding office under him; and in that case he can not claim the right to be independent, except in those matters which relate directly to his position as minister. The sovereign who sends him, by permitting him thus voluntarily to become a subject, agrees to expose himself to whatever inconveniences may result. Thus, in the last century, Baron de Charnace and the Count d'Estrades, ambassadors of France to the States-General, were at the same time officers in the army of their high-mightinesses.

§ 113. The immunity of the minister extends to his property.

The independence of the public minister is, therefore, the real reason why he is exempt from the jurisdiction of the country where he resides. No judicial action may be brought against him directly, because he is not subject to the authority of the prince or of the courts. But does this exemption of his person extend indiscriminately to all his property? In order to answer this question we must consider what circumstances bring property under the jurisdiction of a country and what circumstances exempt it from that jurisdiction. In general, whatever lies within the boundaries of a country is subject to the authority of the sovereign and to his jurisdiction (Book I, § 205, and Book II, §§ 83, 84). If any dispute arises with respect to personal property or goods which are within or are passing through the country, it belongs to the local judge to decide the question. In consequence of this dependence the process of *attachment* or *distress* is made use of in many countries in order to compel a foreigner to come to the place where the property is detained and to answer some question that it is desired to put to him, although the question may not be directly relevant to the property seized. But, as we have shown, the foreign minister is independent of the jurisdiction of the country; and his personal independence in civil matters would be of little value to him if it did not extend to whatever things he needs, in order to live as becomes his position and to fulfill without interference the duties of his office. Besides, whatever he has brought with him, or purchased for his own use as minister, is so closely connected with his person as to be subject to the same rules which govern it. Since the minister comes on a footing of independence, he can not have meant to subject to the jurisdiction of the country his retinue, his baggage, and personal effects. Accordingly, whatever belongs directly to the person of the minister in his official capacity, whatever he uses for the maintenance of himself and his household, all such property, I say, shares in the minister's immunity and is absolutely exempt from the jurisdiction of the country. Like its owner, it is regarded as being outside of the State.

§ 114. The exemption can not be extended to property connected with any trade in which the minister may be engaged.

But the above rule does not hold for property which clearly belongs to the minister in some other capacity than that of minister. Things which have no relation to his official position and duties can not share in the privileges which belong to him because of that position and those duties. Hence, if it happens, as is often the case, that a minister engage in some branch of commerce, all the personal property, goods, money, assets, and liabilities connected with his business, as well as all the litigation and lawsuits resulting therefrom, are subject to the jurisdiction of the country; and although in such lawsuits summons can not be issued against the minister directly, because of his personal independence, he can be indirectly forced to appear by distraining upon the property connected with his business. If this could not be done it is clear that abuses would result. What might not a merchant do if he were privileged to commit with impunity, in a foreign country, injustice of every kind? There is no reason for extending the exemption of the minister to things of that character. If the minister's sovereign fears that some inconveniences will result from the fact that the minister will be thus indirectly amenable to the jurisdiction of the country where he resides, he has only to forbid the minister to carry on a business, which, indeed, ill befits the representative of a State.

Let us add two points in elucidation of what has just been said. (1) In cases of doubt, the respect due to an ambassador requires that the interpretation be always made in his favor. I mean that when there is reason for doubting whether a thing is really destined for the use of the minister and his household or is connected with his mercantile business, the decision must be made in favor of the minister; otherwise there would be danger of violating his privileges. (2) When I say that the minister's property which is not connected with his official character, and especially his business property, may be distrained upon, I am going on the supposition that the distraint is not made for any cause arising out of business affairs which a person may have with the minister in his official capacity, as, for instance, a default in the payment for provisions supplied to his household, or in the payment of house rent, etc., because the claims which a person may have against him in that capacity can not be passed upon in the country, and consequently can not be subjected to its jurisdiction by the indirect method of distraint.

§ 115. Nor to real property which he holds in the country.

All estates of land, all real property, come under the jurisdiction of the country (Book I, § 205, and Book II, §§ 83, 84), no matter by whom they are possessed. Are they to be removed from that jurisdiction by the mere fact that their owner comes as the ambassador of a foreign power? There is no reason for the exemption. The ambassador does not possess such property in his character as ambassador; it is not so attached to his person that it must be considered with it as being outside of the territory. If the foreign prince fears any bad results from the fact that his minister is thus subject to the jurisdiction of the country with respect to any real property the minister possesses, he can choose another for the office. We say, then, that real property possessed by a foreign minister is not essentially changed by the character of the owner, and that it remains under the jurisdiction of the State in which it is situated. All disputes and lawsuits affecting it should be brought before the courts of the country, and those same courts may decree a distraint upon it to satisfy a lawful claim. However, it will be easily understood that if the ambassador owns the house in which he lives, that house is excepted from the rule, as serving for his immediate and personal use; it is excepted, I say, as far as concerns the use which the ambassador actually makes of it.

It can be seen from Bynkershoek's treatise(*a*) that the principles set forth in this and in the preceding section are carried out in practice. When a person wishes to bring suit against an ambassador in either of the two cases just mentioned, that is to say, where the suit relates to real property situated in the country or to personal property which has no connection with the ambassador's official position, the plaintiff should have the ambassdor summoned in the same manner as absent persons, because he is regarded as being out of the country and his position of

---

(*a*) *De foro legatorum*, Cap. XVI, § 6.

independence prevents summonses from being issued against him personally, in the authoritative manner in which summonses are issued by an officer of court.

§ 116. How justice may be obtained against an ambassador.

In what way, then, may satisfaction be obtained of an ambassador who refuses to act justly in the business transactions which persons may have with him. Many writers assert that he may be sued in the courts to whose jurisdiction he was subject before he became ambassador. That does not seem to me a satisfactory solution. If the necessity and the importance of an ambassador's functions exempt him from prosecution in the foreign country where he resides, shall persons be allowed to interfere with him in the performance of his duty by summoning him before the courts of his own country? The interest of the public service forbids it. The minister must be amenable to his sovereign alone, to whom he stands in a relation of personal service. He is an instrument in the hands of the ruler of the Nation, and nothing should be allowed to interfere with or obstruct him in the performance of his duties. Nor would it be just that the absence of a man intrusted with the interests of the sovereign and of the Nation should prove prejudicial to his private affairs. In all countries those who are absent in the service of the State have privileges which secure them from the disadvantages of absent persons. But care must be taken to prevent, as far as possible, these privileges of ministers from becoming too vexatious to the private persons who have dealings with them. How, then, may these conflicting interests—the service of the State and the dispensation of justice—be reconciled? All private persons, whether citizens or aliens, who have claims against a minister, if they can not obtain satisfaction from him personally should apply to his sovereign, who is bound to do justice to them, in the manner best suited to the public service. It is for the sovereign to decide whether it be best to recall the minister or to designate a court in which he can be sued, to order a postponement of the case, etc. In a word, the welfare of the State requires that the minister shall not be interfered with in his duties or distracted from the performance of them, unless the claimant obtain permission of the sovereign; and the sovereign, whose duty it is to do justice to all, should not support his minister in refusing it, or in wearying claimants by unjust delays.

CHAPTER IX.

The Ambassador's House and His Retinue.

§ 117. The ambassador's house. The independence of the ambassador would be very imperfect and his inviolability very insecure if the house in which he dwells did not enjoy a complete immunity, and if it was not inaccessible to the ordinary officers of justice. The ambassador could be troubled under a thousand pretexts, his secrets might be discovered by a search of his papers, and his person exposed to insult. All the reasons which demand his personal independence and inviolability concur thus in securing the immunity of his house. This privilege is universally accorded to ambassadors in civilized States; in all ordinary cases the ambassador's house, like his person, is regarded as being outside the territory. A remarkable instance of this occurred a few years ago at St. Petersburg. On April 3, 1752, thirty soldiers under command of an officer entered the house of the Swedish minister, Baron Greiffenheim, and carried off to prison two of his servants, on the accusation that they had secretly sold liquors, which the imperial farm alone has the privilege of selling. The court, indignant at such proceedings, ordered the immediate arrest of the persons concerned in the act of violence, and the Empress directed that satisfaction should be made to the offended minister. She sent a note to him, and to the other foreign ministers, in which she expressed her indignation and displeasure at what had taken place, and apprised them of the orders which she had given to the Senate to prosecute the head of the bureau for the prevention of the secret sale of liquors, since he was chiefly responsible for the act.

The ambassador's house should be safe from all insult, and should be specially protected by the laws of the State and by the Law of Nations; to insult it is to commit a crime against the State and against all Nations.

§ 118. Right of asylum. But the immunity of the ambassador's house is granted only in favor of himself and his household, as is evident from grounds on which it is based. Is he to be allowed to avail himself of it, so as to make of his house an asylum into which he will admit enemies of the sovereign and of the State, criminals of every sort, and thus protect them from the punishment which they deserve? Such conduct would be contrary to all the duties of an ambassador, to the spirit which should animate him, to the purposes for which he was admitted into the State. This no one will deny. But I go further still and lay it down as a certain truth that a sovereign is not obliged to put up with an abuse which is so injurious to his State and so hurtful to society. It is true that when there is question of certain ordinary misdemeanors, committed by persons who are frequently more unfortunate than criminal, or whose punishment is of no great importance to the peace of the State, the ambassador's house may, indeed, serve as an asylum for them, and it is better to let certain offenders of this kind escape than to expose the minister to the frequent annoyance of having his house searched and to involve the State in the difficulties which might result. And as the ambassador's house is independent of the ordinary jurisdiction of the country, it is in no case permissible for a magistrate, court officer, or other subordinate official to enter it on their own authority, or to send their inferiors to enter it, except on those urgent occasions when the public welfare is in danger and will not admit of delay. All matters of so delicate a character, in which the rights and the honor of a foreign power are involved, and which might bring the State into difficulties with that power, should be carried directly to the sovereign and should be decided by himself in person, or by the council of State, under his orders. It is, accordingly, for the sovereign to decide, when the occasion arises, how far the right of asylum, claimed by an ambassador for his house, should be respected, and if there is question of a criminal whose imprisonment or punishment is of great importance to the State, the sovereign should not be deterred by the consideration of a privilege which was never meant to turn to the injury and ruin of the State. In the year 1726, when the famous Duke Riperda took refuge in the house of the English ambassador, Lord Harrington, the council of Castile decided "that he might be taken thence even by force, since otherwise privileges whose object was to maintain a freer intercourse between sovereigns would on the contrary turn to the ruin and destruction of their authority; that to extend privileges granted to the houses of ambassadors in favor of persons guilty of minor offenses so far as to protect persons who, being intrusted with the finances, the power, and the secrets of a State, have failed in the duties of their office, would produce the most disastrous results for all the Nations of the earth, which, if the principle ever prevailed, would find themselves forced not only to endure the existence of all those who should plot their destruction, but even to see them maintained at their court."(*a*) Nothing truer or more to the point could be said on the subject.

The abuse of the right of asylum has nowhere been carried further than at Rome, where the ambassadors of the powers claim the privilege for the whole district in which their house is situated. The Popes, formerly so formidable to sovereigns, have for more than two centuries been under the necessity of acting cautiously and considerately towards them in turn. They have made vain efforts to abolish, or at least to restrict within just limits, the abuse of a privilege which precedent, however long-standing, can not support against justice and reason.

§ 119. Immunity of an ambassador's carriages.

An ambassador's carriages enjoy the same privileges as are granted to his house, and for a similar reason. To insult them is to attack the ambassador himself and the sovereign whom he represents. They are independent of all subordinate officials, of guards, custom-house officers, magistrates, and their agents; and they can not be stopped and searched without orders from higher authority. But in this matter, as in that of the ambassador's house, care must be taken not to mistake an abuse for a right. It would be absurd to think that a foreign minister could have the right to assist with his carriage the escape of a criminal guilty of some grave offense, a man whom it would be essential to the State to capture, and to do so under the eyes of the sovereign, who would thus see himself defied in his own Kingdom and at his own court. What sovereign would endure it? The Marquis de Fontenay, ambassador of France at Rome, harbored the Neapolitan exiles and rebels, and finally undertook to convey them out of Rome in his carriages; but on leaving the city the carriages were stopped by some Corsicans of the Papal Guard, and the Neapolitans were put in prison. The ambassador warmly complained of the act, but the Pope answered "that he had only desired to capture persons whom the ambassador had assisted in escaping from prison; that since the ambassador had taken the liberty of protecting malefactors and criminals of every sort in the Papal States, it should at least be lawful for him, as sovereign of those States, to capture them wherever they could be found, *since the rights and privileges of ambassadors should not be carried to such lengths.* The ambassador answered

---

(*a*) Mémoires de M. l'Abbé de Montgon, Tom. 1.

that if the case were investigated it would be found that he had not harbored Papal subjects, but merely some Neapolitans whom he might properly protect from the persecutions of the Spaniards."(*a*) By his answer the ambassador impliedly agreed that he would have had no ground for complaint that his carriages had been stopped if he had employed them in assisting Papal subjects to escape and in helping criminals to elude the pursuit of justice.

§ 120. The ambassador's retinue.

The inviolability of the ambassador extends to his retinue, and his independence of the jurisdiction of the country is shared by all the members of his household. These persons are all so closely connected with him that they partake of his privileges; they depend upon him directly, and are exempt from the jurisdiction of the country, since they agree to reside in it only upon that condition. The ambassador should protect them, and whoever insults them insults the ambassador personally. If the servants and the whole household of a foreign minister were not subject to him alone one can see how easily he could be interfered with, disturbed, and bothered in the exercise of his functions. At the present day these principles are everywhere recognized and confirmed by custom.

§ 121. Wife and family of the ambassador.

The ambassador's wife is more intimately united with him than any other person of his household. Accordingly she shares in his independence and his inviolability. She is even shown distinguished honors, which, to a certain degree, can not be refused to her without insulting the ambassador. At most courts there is a prescribed ceremonial to be observed. The respect due to an ambassador reflects, moreover, upon his children, who also share in his immunities.

§ 122. Secretary of the embassy.

The ambassador's secretary is one of his servants; but the secretary of the embassy holds his commission from the sovereign himself, and this fact makes of him a sort of public minister, so that he enjoys on his own account the protection of the Law of Nations and the immunities attaching to his office, independently of the ambassador, to whose orders he is only very imperfectly subject, sometimes not at all so, and in all cases only to the extent fixed by their common master.

§ 123. The ambassador's couriers and dispatches.

The couriers whom an ambassador sends and receives, his papers, his letters and dispatches, are all so essentially connected with the embassy that they must be regarded as inviolable; for if they were not respected it would be impossible to attain the proper object of the embassy, nor could the ambassador fulfill the duties of his office with due security. At the time when President Jeannin was French ambassador to the United Provinces, the States-General decided that to open the letters of a public minister was a violation of the Law of Nations.(*b*) Other examples can be found in Wicquefort's treatise. However, on those grave occasions when the ambassador has himself violated the Law of Nations by forming or favoring dangerous plots or conspiracies against the State, the immunity of his papers does not prevent their seizure in order to discover the details of the plot and to find out his accomplices, since in such a case the ambassador himself may be arrested and examined (§ 99). Such a search was made of the letters sent by the band of traitors at Rome to the ambassador of Tarquin (§ 98).

§ 124. Authority of an ambassador over his retinue.

Since the members of a foreign minister's retinue are independent of the jurisdiction of the country, they can not be arrested or punished without his consent. But it would be very inconvenient if they were to live in complete independence and were to have the liberty of indulging with impunity in unrestrained conduct of every kind. The ambassador is necessarily invested with the authority requisite to keep them in order. Certain writers contend that this authority extends even

---

(*a*) Wicquefort, L'Ambassadeur, Liv. I, § 28, near the end.

(*b*) *Ibid.*, § 27.

to the power of life and death. When the Marquis de Rosny, afterwards Duc de Sully, was ambassador extraordinary from France to England, a gentleman of his suite committed a murder, which excited great concern among the citizens of London. The ambassador assembled some French noblemen who had accompanied him, tried the murderer, and condemned him to death, after which he sent word to the mayor of London that he had sentenced the criminal and asked him to furnish an executioner and guards to carry out the sentence. Later on he agreed to deliver up the criminal to the English, in order that they might punish him themselves as they should see fit; whereupon M. de Beaumont, the French ambassador in ordinary, who was a relative of the young man, obtained his pardon from the King of England.(*a*) It belongs to the sovereign of the ambassador to decide whether his power over his retinue shall extend that far; and the Marquis de Rosny was well assured of the consent of his master, who in fact approved of his conduct. But in general it should be presumed that an ambassador is merely invested with a coercive power sufficient to restrain his retinue by means of imprisonment and other punishments, not capital nor of a degrading character. He may punish them for offenses committed against himself and against his master's service, or he may send back the offenders to their sovereign, to be punished by him. But if any of his retinue should become guilty towards the State by committing crimes worthy of severe punishment, the ambassador should distinguish between such of his servants as are of his own nationality and those who are subjects of the country in which he resides. The simplest and most natural course to pursue with regard to the latter is to dismiss them from his service and to deliver them up to justice. As for those of his own nationality, if they have offended the sovereign of the country, or committed any of those atrocious crimes which all Nations are interested in having punished, so that it is customary to ask for and grant the surrender of the offenders, why should he not deliver them up to the Nation which demands their punishment? If the offense is of a less serious kind he should send them to his sovereign. Finally, in doubtful cases, the ambassador should keep the criminal in custody while awaiting orders from his sovereign. If he should condemn the criminal to death, I do not think he has the power to have the sentence executed in his own house; for the infliction of capital punishment is an act of territorial sovereignty, and as such belongs to the sovereign of the country alone. And although the ambassador, together with his retinue and the house in which he lives, is considered as being outside of the country, this is only a figurative way of expressing his independence of the jurisdiction of the country and his possession of all the rights necessary to the due success of the embassy; and the fiction of exterritoriality can not be made to include rights reserved to the sovereign, rights which are of too delicate and important a nature to be communicated to a foreigner, and which are not necessary to the ambassador for the proper performance of his duties. If the offense has been committed against the ambassador, or against the service of his sovereign, the ambassador may send the culprit to his sovereign; if, on the other hand, the crime affects the State in which the minister resides, he may try the criminal and, on finding him worthy of death, may deliver him up to the officers of the State, as did the Marquis de Rosny.

§ 125. When the rights of an ambassador expire.

When the term of an ambassador's appointment is at an end, when he has concluded the business on which he came, when he is recalled or dismissed—in a word, when he is obliged to depart for one reason or another—his official duties

---

(*a*) Mémoires de Sully, Tom. VI, Chap. I, Ed. in 12mo.

cease, but his privileges and his rights do not thereupon expire; he retains them until he has returned to his sovereign, to whom he must render an account of his office. It is no less necessary to the success of the embassy that an ambassador should enjoy security, independence, and inviolability on his departure than that he should be granted those privileges at his coming. Thus when an ambassador withdraws because war breaks out between his sovereign and the sovereign of the country to which he has been sent as ambassador, he is allowed sufficient time to leave the country in safety; and even if he takes his departure by sea and is captured en route, he is promptly released, as not being properly subject to capture.

§ 126. Cases when new letters of credence are necessary.

For the same reasons an ambassador's privileges continue during periods when the active duties of his office are suspended and he has need of new powers. Such a case occurs either upon the death of the sovereign whom the minister represents or upon that of the sovereign at whose court he resides. In either event it is necessary that the minister obtain new letters of credence; this however, is less necessary in the latter than in the former case, especially if the successor of the dead prince succeeds by a natural and certain title, because as the authority whence the minister derives his power still subsists, it is natural to presume that he continues in his official position at the court of the new sovereign. But if the minister's own sovereign dies the minister's powers expire, and he must necessarily obtain letters of credence from the succeeding sovereign before he can speak and act in his name. However, he continues in the interim minister of his Nation, and as such he should enjoy the rights and honors attached to that character.

§ 127. Conclusion.

At length I have reached the end of the work which I undertook to accomplish. I do not flatter myself that I have given a complete and detailed treatise on the Law of Nations. That was not my purpose; and it would have been presuming too much on my abilities to have attempted such a work on a subject of so extensive and varied a character. I shall be satisfied if the principles I have set forth prove to be clear, sound, and sufficiently comprehensive to enable persons of intelligence to solve questions of detail by applying the principles to the specific cases. Happy shall I be if my work may be of service to those in power who have a love for mankind and a respect for justice; if it furnish them with a weapon for the defense of a just cause, and a means of compelling unjust rulers to observe at least some limits and to keep within the bounds of propriety.

341
V45
v.3

RAYMOND H. FOGLER LIBRARY
DATE DUE

BOOKS ARE SUBJECT TO
RECALL AFTER TWO WEEKS

DEC 1 8 1981

UNIV OF MAINE
3 7550 00920331 7